

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

CREEDON CONTROLS, INC., a Delaware corporation, )  
Plaintiff, )  
v. )  
BANC ONE BUILDING CORPORATION, )  
an Illinois corporation; and FOREST ELECTRIC )  
CORPORATION, a New York corporation, )  
Defendants. )

**DUAL APPENDIX  
SUBMITTED IN SUPPORT OF  
PLAINTIFF CREEDON CONTROLS, INC.'S  
OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT  
FILED BY BANC ONE BUILDING CORPORATION  
AND  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
FILED BY FOREST ELECTRIC CORPORATION**

**VOLUME TWO**

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RKB/msj  
06894-0001  
Doc. #363

**Paul Angerame**  
04/12/2004 02:35 PM

To: keane@tishman.com  
cc: Donna Lucas/Forest/EMCORGROUP@EMCORGROUP  
Subject: Subcontract Agreement

Per our conversation and your direction today Forest is utilizing the attached subcontract agreement for all Trade Management subcontracts on the Bank One CDC I and CDC II projects.

**Paul Angerame**  
Forest Electric Corp.  
An EMCOR Company  
Wilmington Field Office  
4001 Governor Printz Blvd.  
Wilmington, DE 19801  
P-302.762.3390  
F-877.804.1319  
C-917.807.3945

----- Forwarded by Paul Angerame/Forest/EMCORGROUP on 04/12/2004 10:56 AM -----

**Juliane Lynch**  
03/29/2004 09:54 AM

To: keane@tishman.com, pwelsing@tishman.com,  
smith@ma.tishman.com, TKoenig@tishman.com  
cc: Paul Angerame/Forest/EMCORGROUP@EMCORGROUP  
Subject: Subcontract Agreement

Subcontract Agreement attached for your review and approval.

**Juliane Lynch**  
Forest Electric Corp.  
Two Penn Plaza, 4th Floor  
New York, NY 10121  
Tel: 212.318.1717  
CDC II: 302.762.3390



CONTRACT-TRADE MANAGER.ElectricalSubcontractor.Re

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FE 014497

B-0270

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**SINGLE PROJECT**  
**CONSTRUCTION SERVICES AGREEMENT**  
**CONTRACT NO. 1 – TRADE MANAGER**

Pre-bid meetings will/will not be held. If applicable, the pre-bid meeting will occur at \_\_\_\_\_ A.M./P.M. on \_\_\_\_\_, at CDC #1 - 501 Bear Christiana Road, Bear, DE 19701.

Owner:  
Banc One Building Corporation  
1 Bank One Plaza  
Mail Code IL1-0505  
Chicago, IL 60670-0503

Construction Contractor:

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Owner's Project Manager:  
Karl Wm. Auwarter, VP, Real Estate

**Construction Contractor's Key Staff Members:**  
Superintendent: \_\_\_\_\_  
Assistant Superintendent: \_\_\_\_\_

**Building Owner/Manager:** None

**Other Key Staff:**

<b>Title</b> _____	<b>Name:</b> _____
_____	_____
_____	_____
_____	_____
_____	_____

**Construction Manager:**  
Tishman Construction Corporation of Maryland  
666 Fifth Avenue  
New York, New York 10103-0256

**Construction Contractor's Authorized Signatories:**  
1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_  
4. \_\_\_\_\_

Electrical Trade Manager:  
Forest Electric Corp.  
Two Penn Plaza  
New York, NY 10121

This Single Project Construction Services Agreement is made as of the 12<sup>th</sup> day of September 2003 ("Agreement") between Electrical Trade Manager and Construction Contractor. This Agreement, including all exhibits attached hereto, together with all drawings, specifications and modifications issued after the execution of this Agreement and delivered to Construction Contractor, are herein called the "Contract" and the "Contract Documents". Electrical Trade Manager and Construction Contractor agree to the terms and conditions set forth in the Contract Documents.

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1. The project ("Project") consists generally of, and a general description of the Work is (and, if applicable, a more detailed description of the Work is set forth on Exhibit C), as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Construction Contractor acknowledges it received the plans and specifications that are listed on, and, as applicable, a more detailed description of the Work as set forth on, Exhibit C hereto.
3. Construction Contractor's obligations under this Agreement will/will not (strike through one) require payment and performance bonds as set forth in Section 6.04 of the General Conditions attached hereto as Exhibit G ("General Conditions"). If no selection is clearly made in the preceding sentence, then payment and performance bonds will be required as set forth in Section 6.04 of the General Conditions.
4. Liquidated damages will/will not (strike through one) be applicable to the Project as set forth in Section 7.03 of the General Conditions. If required, the "Per Day Liquidated Damage Amount" is **\$5,000 per day**.
5. The "Contract Sum" is \_\_\_\_\_. The Contract Sum (subject to additions and deductions by change orders as provided by the Contract Documents) includes all costs and expenses related to the Work incurred by or on behalf of Construction Contractor and any costs or expenses in excess of the Contract Sum in anyway related to the Work or the Contract Documents shall be paid by Construction Contractor. Additionally, upon final completion of the Work at the time of the final payment being made to Construction Contractor, all costs associated with unused allowances and contingencies will be adjusted and returned to the Owner.
6. Written notice shall be deemed to be duly served if served to the Electrical Trade Manager or Construction Contractor, as the case may be, at the respective address set forth below in accordance with Section 6.03 of the General Conditions:

If to Construction Manager, addressed to:  
 Tishman Construction Corporation of  
 Maryland  
 666 Fifth Avenue  
 New York, New York 10103-0256  
 Attention: William Stanton

With a copy to Owner:

Bank One  
301 N. Walnut Street  
Wilmington, DE 19801

Attention: Karl Auwarter

If to Construction Contractor, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:

If to Electrical Trade Manager, addressed to:

Forest Electric Corp.  
Two Penn Plaza  
New York, New York 10121  
 Attention: Philip Althem

7. Electrical Trade Manager hereby represents to Construction Contractor that (i) Owner has retained Electrical Trade Manager to act as Owner's construction managers to arrange for the construction of the Project; and (ii) Electrical Trade Manager has full power and authority and is duly authorized to execute and deliver this Contract with and to Construction Contractor upon the terms and conditions set forth herein. All communications from Owner to Construction Contractor shall be delivered either (i) to Electrical Trade Manager with instructions to forward such communications to Construction Contractor, or (ii) directly to Construction Contractor with a simultaneous notification to Electrical Trade Manager. All written approvals and actions required of or permitted to be taken by Owner under the Contract shall be effective if executed by either Owner or by Electrical Trade Manager acting on Owner's behalf, and Construction Contractor shall be permitted to rely on all such written approvals unless and until Owner

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(and not Electrical Trade Manager) notifies Construction Contractor in writing to the contrary. Construction Contractor shall be entitled to rely on information communicated through the Electrical Trade Manager and work with the Electrical Trade Manager until Owner provides written notice of the termination of such Electrical Trade Manager's responsibilities or a substitution of such Electrical Trade Manager.

This Agreement shall be effective only when (i) Electrical Trade Manager executes and delivers this Single Project Construction Services Agreement to Construction Contractor, (ii) all appropriate blanks contained herein are completed, and (iii) each of the Exhibits A, B, C, D, E, F, and G (each of which is hereby incorporated herein) has been completed and attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

CONSTRUCTION CONTRACTOR:

FIRM: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

OWNER:

BANC ONE BUILDING CORPORATION,  
an Illinois Corporation

By: Forest Electric Corp. as Banc One Building  
Corporation's agent and Electrical Trade  
Manager.

By: \_\_\_\_\_

Name: Philip Altheim

Title: Chairman/CEO

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LIST OF EXHIBITS  
TO  
SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT

- EXHIBIT A COMPLETION SCHEDULE
- EXHIBIT B SCHEDULE OF VALUES AND ANTICIPATED DRAW SCHEDULE
- EXHIBIT C PLANS AND SPECIFICATIONS
- EXHIBIT D WORK AREA
- EXHIBIT E MAXIMUM CHANGE ORDER RATES FOR OVERHEAD, PROFIT, CONTRACTOR'S FEE, AND GENERAL CONDITIONS
- EXHIBIT F RATES AND UNIT PRICES
- EXHIBIT G GENERAL CONDITIONS TO SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT
- EXHIBIT H FOREST ELECTRIC RFPXXA/B BEST AND FINAL PRICE

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EXHIBIT A

COMPLETION SCHEDULE

Note:—This Schedule must include the dates for Substantial Completion and Final Completion.

September 15, 2004

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EXHIBIT B

SCHEDULE OF VALUES AND ANTICIPATED DRAW SCHEDULE

Note: These schedules must specifically separate out the Cost of the Work, Construction Contractor's Fee, and General Conditions Items.

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EXHIBIT C

PLANS AND SPECIFICATIONS

Attached Rider "B", List of Drawings and Specifications dated July 14, 2003 and all bulletins and addenda issued thereafter.

EXHIBIT D

WORK AREA

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**501 Bear Christiana Road  
Bear, Delaware 19701**

D-1

Single Project Construction Services Agreement 3/03/2003

FE 014505

**B-0278**

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EXHIBIT E

MAXIMUM CHANGE ORDER RATES FOR OVERHEAD,  
PROFIT, CONSTRUCTION CONTRACTOR'S FEE, AND GENERAL CONDITIONS

1.	Subcontractor may add to its "on-site" cost for extra Work.	<u>10 %</u> for all overhead, profit, fee and general conditions items
2.	Construction Contractor may add to its "on-site" cost of extra Work when such Work is performed directly at the site with its own personnel, equipment and materials, it being agreed by Construction Contractor that it will not subcontract out work when it would be more efficient (both in terms of time and money) for Construction Contractor's own personnel to perform such work.	<u>15 %</u> for all of Construction Contractor's Fee and general conditions Items related to such Change Order
3.	Construction Contractor may add an additional percentage to subcontractor's costs for administration and supervision of extra Work by a subcontractor.	<u>5 %</u> for all of Construction Contractor's Fee and plus general conditions Items related to such Change Order
4.	Construction Contractor shall deduct over and above his "on-site" cost of deleted Work when such Work would have been performed directly at the Site with its own personnel, equipment and materials.	<u>15 %</u> for all of Construction Contractor's Fee and general conditions Items related to such Change Order
5.	Construction Contractor shall deduct an additional percentage over and above subcontractor's credit for administration and supervision of extra Work by a subcontractor.	<u>5 %</u> for all of Construction Contractor's Fee and general conditions Items related to such Change Order

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EXHIBIT F

RATES AND UNIT PRICES

<u>Item</u>	<u>Price</u>
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EXHIBIT G

GENERAL CONDITIONS  
TO  
SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT

These General Conditions are attached to and made a part of the Single Project Construction Services Agreement ("Agreement"). All terms defined either in the Agreement or in these General Conditions shall have the meaning ascribed thereto wherever used in the Contract Documents. Terms and abbreviations not specifically defined in the Contract Documents which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

**ARTICLE I      WORK**

1.01 Construction Contractor shall perform or cause to be performed, in a first class manner and in accordance with the Contract, all work set forth in, contemplated by or reasonably inferable as being necessary to produce the intended results from, the plans and specifications listed on Exhibit C to the Agreement (as supplemented and modified by Owner throughout the design process), including all labor and materials to complete the general description of such work contained in the Agreement and all movable furnishings specifically identified as being the responsibility of or to be performed by Construction Contractor on such plans and specifications (as supplemented and modified by Owner throughout the design process) and excluding movable furnishings specified or indicated on such plans and specifications to be excluded or to be the responsibility of Owner or Owner's other contractors or consultants (collectively all such labor, materials, and services to be provided by Construction Contractor are herein called the "Work"). In the event of any discrepancy between large-scale plans and small-scale plans, the large-scale plans shall govern. The foregoing shall not relieve Construction Contractor of Construction Contractor's responsibility to advise Owner of any inconsistencies in any of the plans and specifications which a fully competent first class contractor could reasonably be expected to discover upon review of the plans and specifications. Except as set forth above, if any of the Contract Documents imposes a different or greater obligation or limitation upon Construction Contractor than another Contract Document, the Contract Document imposing the greater obligation or limitation on Construction Contractor shall govern and prevail. Plans and specifications which are either (i) necessary for the proper execution and completion of the Work or for the proper operation of the completed improvements or (ii) consistent with and reasonably inferable from the plans and specifications attached hereto as Exhibit C (as supplemented and modified by Owner throughout the design process) as being part of the scope of the Work may hereafter be furnished and will be incorporated in Exhibit C and into the Work at no additional cost to Owner. Construction Contractor acknowledges that it has participated and will participate in meetings with Owner and its design professionals and Construction Contractor has been given ample opportunity to obtain a thorough understanding of the intended final product and fully reviewed the plans and specifications listed on Exhibit C, and thus Construction Contractor hereby agrees that no increase in the Contract Sum shall result unless a change in scope occurs as evidenced by a written change order executed by Owner and Construction Contractor. Construction Contractor shall participate in the value engineering by proposing appropriate and suitable alternatives to achieve the intended design, functionality and quality in a manner that will best enable the Work to be completed within the budget and schedule therefor and shall cooperate and work with the Owner and its consultants as part of an integrated team to maximize the quality of the improvements contemplated by the Work and its components and systems while minimizing the cost of the Work and meeting the requirements of the schedule therefor.

1.02 As between Owner and Construction Contractor, all plans and specifications for the Work and other material related to the Work prepared by Construction Contractor or furnished to Construction Contractor by Owner are and shall remain Owner's property, and shall be used by Construction Contractor only with respect to the Work. Construction Contractor acknowledges that a confidential relationship has been established between Owner and Construction Contractor and that Owner may communicate to Construction Contractor certain confidential information to enable Construction Contractor to render the services required in the Contract. Construction Contractor agrees (i) to treat and to obligate its consultants, employees, and subcontractors to consider and treat all information as secret and confidential, and (ii) not to disclose or issue any information or make available any reports, recommendations and/or conclusions in connection with the Work or the Site, which Construction

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Contractor may make to Owner, or any drawings, to any person, firm or corporation or use the same in any manner whatsoever without first obtaining Owner's prior written approval.

1.03 The Contract Documents represent the entire and integrated agreement between Owner and Construction Contractor and shall be deemed to supersede all prior negotiations, representations or agreements, whether written or oral.

## ARTICLE 2 OWNER

2.01 To the extent required by Construction Contractor to perform the Work, Owner shall furnish descriptions of all surveys describing the physical characteristics, legal limitations and utility locations for the area within which the Work is to be performed and where materials are to be stored, which Work areas within the Site are limited to the areas designated as such on Exhibit D to the Agreement ("Work Area"). Construction Contractor shall confine its activities at the Site to the Work Area. All other grades, lines, levels, benchmarks, courses and distances shall be established and maintained by Construction Contractor.

2.02 Unless otherwise provided in the Contract Documents, Construction Contractor will be furnished with, free of charge, one set of prints and one reproducible set of all drawings comprising the plans and specifications and one set of the specifications. Owner shall be responsible for all utility connection charges and tap-in fees, including excess capacity fees, meter installation charges or the like.

2.03 If Construction Contractor is in default of any of its obligations under the Contract Documents, and such failure or default continues for seven days after written notice from Owner, Owner may order Construction Contractor immediately to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Construction Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, Owner's other rights under the Contract Documents.

2.04 The Electrical Trade Manager identified in the Agreement, or any substitute designated as such in writing from Owner to Construction Contractor, is Owner's representative with full power to bind Owner.

2.05 Owner reserves for itself and its representatives the right of access to any part of the Work at any time for the purpose of observing or testing or to install other work either with its own forces or with other contractors. Such access is not to be construed to mean partial occupancy by Owner.

2.06 Owner reserves the right to designate, by notice to Construction Contractor (if not so designated on Page 1 of the Agreement) one or more persons or entities that is the owner or manager of the Site or the existing building within which the Work is to be performed (if any, the "Building") as a Building Owner/Manager. To the extent a Building Owner/Manager is so designated, all provisions of this Contract relating to the Building Owner/Manager shall apply, and mean and refer, to the persons or entities so designated. To the extent a Building Owner/Manager is not so designated, no force or effect shall be given to those provisions to the extent related to the Building Owner/Manager.

2.07 Owner reserves the right to engage third parties, including architects and engineers, to assist Owner in various capacities related to the Work and Contract Documents, including in the administration of the Contract Documents. Construction Contractor agrees to cooperate with all such consultants, including architects and engineers, in all aspects of the Work and Contract Documents, including the administration thereof. Construction Contractor acknowledges and agrees that Owner may grant conditional approval of or require the approval of any such consultant, including any architect or engineer, as a condition to Owner's granting any consent or approval required of Owner under the Contract Documents. Construction Contractor shall cooperate with such processes required by Owner to obtain such consultant" consents.

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ARTICLE 3 CONSTRUCTION CONTRACTOR

3.01 Construction Contractor shall have primary responsibility for preparation of budgets for the Work throughout the design process in cooperation and consultation with Owner and its consultants. Construction Contractor's submission nor Owner's approval of any budget shall alter the Contract Sum (absent a Change Order executed by the Parties). Any budget may contain one or more line items for Owner's contingency or a contingency expressly to be controlled by Owner and each such contingency is herein called an "Owner's Contingency". An Owner's Contingency (i) shall only be available for use in connection with the Work upon Owner's written approval, which may be granted or denied by Owner in Owner's sole discretion for any or no reason, (ii) shall not be included in the agreed upon Contract Sum, and (iii) which is not used upon final completion of the Work and Construction Contractor is not entitled to any unused portion thereof.

3.02 Construction Contractor shall perform the Work in accordance with all laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site ("Government Requirements"), and otherwise perform Construction Contractor's obligations contemplated in the Contract Documents. Construction Contractor acknowledges that Construction Contractor has visited the Site, examined all conditions affecting the Work, and is fully familiar with all of the conditions thereon and affecting the Work and the Work Area. Construction Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved (or approved as noted) shop drawings, product data or samples for such portion of the Work.

3.03 Construction Contractor shall employ a competent project superintendent, necessary assistants, and staff, as necessary for the proper administration, coordination and supervision of the Work, all approved by Owner in writing by either being listed in the Agreement or by separate written approval accepted by or on behalf of Owner. Owner's approval of any such person (or of any substitute for such person) shall not relieve Construction Contractor of or otherwise limit or affect Construction Contractor's obligation to employ competent persons of sufficient skill and experience to perform their assigned responsibilities in accordance with the standards and requirements set forth in the Contract. Construction Contractor's project superintendent shall be in attendance at the Work Area for the duration of the Work and such project superintendent's duties shall not be diminished without the prior written consent of Owner. Construction Contractor's project superintendent shall represent Construction Contractor and all communications given to such project superintendent shall be as binding as if given to Construction Contractor. Upon Owner's request, any communication from such project superintendent shall be confirmed in writing by an authorized partner, member or officer, as the case may be, of Construction Contractor. Construction Contractor's project superintendent shall have authority to furnish estimates and to approve field changes and shall attend meetings with Owner at such times and places as shall be requested by Owner to report on the progress of the Work or otherwise to consult with Owner. Construction Contractor's project superintendent and other members of Construction Contractor's staff identified on page 1 of the Agreement or separately approved by Owner as provided above shall not be changed without the consent of Owner unless such person leaves the employ of Construction Contractor, in which event the substitute must first be approved in writing by Owner. If Owner gives Construction Contractor notice Construction Contractor's project superintendent or any other of Construction Contractor's personnel identified on page 1 of the Agreement (or any person that replaces any of the foregoing) has failed to perform his or her responsibilities in accordance with the standards set forth in this Contract and such failure is not remedied within ten (10) days of such notice, Construction Contractor shall, if requested by Owner, promptly replace such person with a person having the competence, skill and experience necessary to perform such responsibilities and approved by Owner. Those individuals who are the authorized signatories for Construction Contractor are also listed in the Agreement.

3.04 Construction Contractor shall (a) supervise and direct the Work using Construction Contractor's best professional skill and attention, and (b) be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Construction Contractor shall furnish its best skill and judgment, employing first class professional standards, and shall cooperate with the other parties involved in the Work in furthering the interests of Owner. Construction Contractor accepts sole responsibility for the acts and omissions of Construction Contractor's employees, subcontractors and their respective agents and employees. Construction Contractor shall (i) at all times enforce strict discipline and good order among Construction Contractor's employees and shall not employ on the Work any unfit person or anyone not skilled in the

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task assigned to him; (ii) confine Construction Contractor's equipment, apparatus, materials, and operations of its workmen and subcontractors within limits allowed by Owner and Building Owner/Manager and not unnecessarily burden the Work Area with materials; (iii) correct, at Construction Contractor's expense, damage to property resulting from the Work; and (iv) if the Work requires a temporary shut-down of a service in the Building or any other improvements on the Site, cause such Work to be accomplished during other than normal hours and coordinated with Owner and Building Owner/Manager at Construction Contractor's expense; provided further that Construction Contractor shall give adequate notice to Owner and Building Owner/Manager that Construction Contractor will require a shut-down.

**3.05** (a) Construction Contractor shall not use, in connection with the Work, any material containing asbestos as defined by the United States Environmental Protection Agency 40 CFR CH. 1 (7-1-00 Edition) Subpart M-National Emission Standard for Asbestos and the Occupational Safety and Health Administration, Part 1910: Occupational Safety and Health Standards, Subpart Z: Toxic and Hazardous Substances, Standard 1910.1001: Asbestos.

(b) Construction Contractor shall not use, in connection with the Work, any hazardous waste, toxic substance or related materials, including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq., Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802, and the Resource Conservation Act and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("Hazardous Materials") in such manner as would violate any Government Requirements or would cause any damage or a risk of any damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner.

**3.06** Construction Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin or ancestry. Construction Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin or ancestry. Construction Contractor shall comply with, and shall cooperate with Owner and other contractors and subcontractors in connection with compliance with, the regulations of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), or any similar state law which is applicable. If any Construction Contractor's employee working on the Work files a charge of noncompliance with OSHA, Construction Contractor shall notify Owner's Project Manager promptly upon receiving notice of such charge.

**3.07** (a) The Contract Sum is based on the Completion Schedule attached to the Agreement as Exhibit A (said schedule, as modified as permitted herein with Owner's written approval is herein called the "Completion Schedule"). Except as expressly provided for in the Contract Documents, Construction Contractor shall not be entitled to any additional payment for overtime, which includes shift work, required to complete the Work in accordance with the Completion Schedule.

(b) If Owner requests Construction Contractor to work overtime due solely to Owner's election to accelerate the performance of the Work ahead of the Completion Schedule, Construction Contractor shall comply with the following requirements:

(i) Construction Contractor shall submit a statement of employees by name, trade, classification, hourly rate, and premiums or overtime charges worked to substantiate premium or overtime charges, in such detail as to demonstrate to Owner its correctness. These statements shall be prepared on a daily basis and shall be submitted daily for Owner's records. The rates, premiums and overtime charges shall correspond with the schedule of rates and unit costs in Exhibit F to the Agreement, which rates and unit prices include all contributions to federal and state unemployment tax and for federal insurance contributions tax required to be paid by Construction Contractor.

(ii) Owner will pay for authorized overtime work only the amounts of overtime premium wages actually paid by Construction Contractor in accordance with those set forth on the schedule of rates and unit costs attached as Exhibit F to the Agreement.

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3.08 (a) Construction Contractor represents and warrants to and covenants with Owner that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all Work will be free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by Owner. If required by Owner, Construction Contractor shall promptly furnish satisfactory samples of materials demonstrating that the materials comply with this Section. This representation, warranty and covenant is not limited by the provisions of Section 11.02 hereof related to correction of Work.

(b) Construction Contractor warrants all Work performed and material and equipment furnished against defects and deficiencies (it being agreed by Owner that failure of any part of the Work due solely to misuse by persons other than Construction Contractor and subcontractors shall not be deemed a defect or deficiency in such part) which develop within (i) as to those portions of the Work not covered by the following clause (ii), a period of one year from final completion of the Work or if such defect is not discovered within one year from final completion of the Work, a period of one year from the time such defect should have been discovered with the exercise of reasonable diligence and in no event shall such warranty extend beyond three years from the date of acceptance of the Work and final payment by Owner; (ii) the period specified in the Contract Documents as to any part of the Work for which a period longer than one year is specified. The foregoing time limitations shall not apply to defects and deficiencies which are latent and not readily ascertainable by ordinary observation. Notwithstanding the foregoing, if Construction Contractor uses any heating, ventilating or air conditioning facilities installed as a part of the Work prior to final completion, the warranty with respect to such heating, ventilating or air conditioning facilities shall not commence until final completion of all of the Work.

(c) Construction Contractor shall require each subcontractor to execute and deliver to Owner a warranty of the Work to be performed by such subcontractor, in form satisfactory to Owner which shall equal or exceed the requirements of this Section 3.08 and any additional requirements set forth in the Contract Documents and shall otherwise be in form and substance satisfactory to Owner. Such warranty by a subcontractor shall be enforceable directly by Owner against each such subcontractor and shall be in addition to any warranty provided by Construction Contractor herein. Construction Contractor shall obtain warranties with respect to all equipment and materials and personal property supplied with respect to the Work from the respective suppliers, at least as favorable as those generally supplied with respect to such equipment, materials and personal property by the suppliers thereof and satisfying any requirements set forth in the Contract Documents, which warranties shall be enforceable directly by Owner against such suppliers and shall be in addition to any warranty provided by Construction Contractor herein or by any subcontractor. The warranties shall be executed by the respective suppliers or subcontractors not later than the date of payment to be made with substantial completion of the applicable subcontract or purchase order. Construction Contractor shall obtain such warranties from each subcontractor and deliver one executed original of each to Owner. Construction Contractor shall bind copies of warranties together in a single volume, grouped by trade and properly indexed. Owner shall have no obligation to make any payment with respect to the portion of the Work provided by any subcontractor or supplier which has not delivered the warranties required of such party.

(d) If the Contract Documents, any Government Requirements or Owner (to see if the Work complies with the Contract Documents) require any part of the Work to be tested, Construction Contractor shall give Owner not less than 48 hours' notice of the readiness of such part of the Work so that Owner may observe such testing. Construction Contractor will retain a tester satisfactory to Owner. Construction Contractor shall bear the costs of all tests required by the Contract Documents or by Governmental Requirements. If a test is not required either by the Contract Documents or by any Governmental Requirements, and if testing reveals a failure of the Work to comply with the Contract Documents, Construction Contractor shall bear all costs related to such test, including compensation for Owner's additional services made necessary by such test, and Construction Contractor shall correct such failure in accordance with Article 11 hereof; otherwise Owner shall bear such costs, and an appropriate change order shall be issued to adjust the Contract Sum. Construction Contractor shall not be relieved of Construction Contractor's obligations to perform or cause performance of the Work in accordance with the Contract Documents by reason of any errors or omissions contained in any tests performed by or for Owner, notwithstanding that such tests and the results thereof may have been delivered to Construction Contractor and that Construction Contractor may have relied upon the correctness of such tests. The fact that Owner may have provided to Construction Contractor any such tests or the results thereof, shall not relieve Construction Contractor of the

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obligation to assure that the Work performed by Construction Contractor is in compliance with the Contract Documents.

3.09 Construction Contractor shall procure all permits, licenses and certificates of inspection or occupancy necessary to complete the Work and occupy the Work Area, and shall deliver same to Owner promptly upon completion of the Work or at Owner's request. If any utility connection charges, tap-in fees or similar items are required to be paid as a condition precedent to the issuance of any such permits, licenses, or certificates, Construction Contractor shall notify Owner thereof and coordinate Owner's payment of such items as required by Section 2.02 in a timely manner to permit proper issuance of all permits, licenses and certificates as required hereby. Prior to Construction Contractor's application for a permit, Construction Contractor shall secure Owner's approval of the Project value to be used for permit purposes.

3.10 Construction Contractor shall commence performance of its obligations under the Contract Documents upon the date set forth in the Completion Schedule for commencement of the Work or, if no such date is included in the Completion Schedule, upon execution of the Agreement by Owner and delivery to Construction Contractor of the Agreement by Owner. Construction Contractor shall, subject to adjustment evidenced by change orders, cause completion of each of the elements of the Work, including substantial completion and final completion, as set forth in the Completion Schedule. Construction Contractor shall consult with Owner on the actual progress of the Work and, if requested by Owner at any time, shall at no additional cost to Owner, submit to Owner a series of reports (at such intervals as may be requested by Owner) reflecting the progress of the Work.

3.11 Construction Contractor shall maintain at the Work Area for Owner one record copy of all current and up-to-date plans and specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction, and approved shop drawings, product data and samples. No review or receipt of such records by Owner shall be a waiver of any deviation from the Contract Documents or in any way relieve Construction Contractor from Construction Contractor's responsibility to perform the Work in accordance with the Contract Documents unless such deviations are specifically noted in writing by Construction Contractor and specifically approved in writing by Owner. Construction Contractor shall furnish to Owner four complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment furnished under the Contract Documents and any additional data specifically requested under the various sections of the specifications for each division of the Work. The manuals shall be arranged in proper order, indexed and suitably bound.

3.12 (a) Construction Contractor shall procure, review, and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in any work of Owner, all shop drawings, product data and samples required by Contract Documents. Construction Contractor shall maintain an accurate record of all deviations from the plans and specifications which occur in the Work as actually constructed, and shall submit to Owner, two (2) sets (one to be reproducible) of complete information including descriptions, drawings, sketches, marked prints, and similar data, indicating the "as-built" conditions. Construction Contractor shall keep "as-built" record drawings up to date concurrently as the Work progresses. Submittal of such drawings is required prior to Construction Contractor submitting its application for final payment.

(b) Each subcontractor shall submit through Construction Contractor all shop drawings at a scale which is easily read and not smaller than 8-1/2 inches by 11 inches nor larger than 36 inches by 48 inches, and all samples and manufacturers' descriptive data. All submissions by or through Construction Contractor shall be thoroughly examined by Construction Contractor and shall clearly identify the relevant specifications section before submission to Owner, and shall bear Construction Contractor's approval stamp.

(c) All shop drawings must be dated and properly identified with the name of the Site and Work Area. Each lot submitted must be accompanied by a letter of transmittal which refers to the name of the Site and Work Area and to the specification section number for identification of each item, and which clearly states qualifications, departures or deviations from the Contract Documents, if any. For each section of the Work, shop drawings shall be numbered consecutively and the numbering system shall be retained throughout all revisions. Construction Contractor shall submit one reproducible transparency and as many prints (at least three) of each shop drawing as may be reasonably required by Owner until final acceptance thereof is obtained. Construction

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Contractor shall submit copies, in amounts requested by Owner, of manufacturers' descriptive data for materials, equipment and fixtures.

(d) In case a considerable range of color, graining, texture or other characteristic may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by Construction Contractor to indicate the full range of such characteristics that will be present in the finished products. Products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the specifications, samples shall be submitted to Owner in triplicate. All samples shall be marked, tagged or otherwise properly identified with the name of Construction Contractor, the name of the Site and Work Area, the purpose for which the samples are submitted and the date, and shall be accompanied by a letter of transmittal containing similar information, together with the specifications section number for identification of each item.

3.13 Construction Contractor shall be responsible for seeing that structural members are not cut without prior written authority of the Building Owner/Manager and Owner. Owner's permission to patch any areas or items of Work shall not constitute a waiver of Owner's right to require complete removal and replacement of said areas or items of Work, if, in Owner's opinion, said patching does not satisfactorily restore quality and appearance of same. Any penetration of the slab of any floor shall be core drilled in accordance with procedures to be established and approved in writing by the Building Owner/Manager and Owner.

3.14 Construction Contractor at all times shall keep the Work Area and to the extent Construction Contractor is granted access, the Site, in a neat and orderly condition and free from accumulation of waste materials or rubbish caused by Construction Contractor's operations. In order to make the Work fit for occupancy for its intended purposes upon substantial completion, Construction Contractor shall remove as soon as and to the extent practicable all temporary facilities, waste materials and rubbish from and about the Work Area and, to the extent Construction Contractor is granted access, the Site, as well as all supplies, tools, construction equipment, machinery and surplus materials and leave such areas in a broom clean condition or such other condition as Owner may designate to Construction Contractor in writing prior to the date hereof. Any items damaged by Construction Contractor or its subcontractors shall be replaced, and all surfaces which have been scratched or marred shall be refinished, at no additional cost to Owner.

3.15 Construction Contractor shall pay all royalties and license fees applicable to the Work and shall not unlawfully use or install any patented article.

3.16 (a) To the fullest extent permitted by law, Construction Contractor shall indemnify, defend, save and hold Owner; its affiliated companies; Owner's Lender, if any; Owner's tenants, if any; the Building Owner/Manager, if different from Owner, Construction Manager, Electrical Trade Manager and the shareholders, members, partners, officers, employees of all of them (collectively the "Indemnitees") harmless from and against all loss and expense (including reasonable attorneys' fees and other costs and expenses) by reason of the liability imposed by law upon the Indemnitees, or any of them, for damages because of Construction Contractor's breach of the Contract Documents and for damages because of bodily injury, occupational sickness or disease, including death resulting therefrom, sustained by any employees of Construction Contractor or subcontractor while at the Site where Work under the Contract is being conducted or elsewhere, while engaged in the performance of Work under the Contract, or sustained by any person or persons other than employees of Construction Contractor, however such injuries may be caused Construction Contractor, including such injuries as are caused by concurrent negligence of the Indemnitees, or any of them, whether attributable to a breach of statutory duty or administrative regulation or otherwise, and such injuries for which liability is imputed to the Indemnitees, or any of them, or claims for property damage because of injury to or destruction of tangible property (other than the Work itself to the extent the damage or injury thereto results from a loss covered by Owner's policy of builder's risk insurance, including loss of use resulting therefrom), directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work or the failure to protect the Work or the Site, or the condition of the Work, the Site, adjoining land or driveways, or streets or alleys used in connection with the performance of the Work. Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section include, subject only to the limitations contained in this Section, all liabilities, damages, losses, claims, demands and actions on account of bodily injury, death or property loss to an Indemnitee or to any other persons or entities, whether based upon, or

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claimed to be based upon, statutory (including workers' compensation), contractual, tort or other liability of any Indemnitee. In addition, such defense and indemnity shall include all liabilities, damages, losses, claims, demands and actions for defamation, false arrest, malicious prosecution or any other infringement of similar rights.

(b) The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence, if any, to the extent not permitted by law or to eliminate or reduce any other indemnification, right or remedy which Owner has under Contract Documents or otherwise.

(c) The obligation set forth in this Section shall, but not by way of limitation, specifically include all claims directly or indirectly alleged to arise under any scaffolding, structural work or safe place law, or any law with respect to the protection of adjacent landowners.

(d) Construction Contractor shall be notified of any claims against any of the Indemnitees of which Owner has notice, and Owner shall give Construction Contractor such reasonable information and assistance as may be requested by Construction Contractor to perform the obligations set forth in this Section; provided, however, that (i) failure to notify Construction Contractor of any claim shall not relieve Construction Contractor of any obligations contained in this Section; and (ii) the obligation of Owner to give information and assistance shall be at Construction Contractor's expense and shall not obligate Owner to incur any expense or liability.

(e) Construction Contractor expressly understands and agrees that any performance or labor and material bond or insurance protection required by any provision of the Contract Documents, or otherwise provided by Construction Contractor, shall in no way limit the responsibility to indemnify, save and hold harmless and defend each of the Indemnitees as herein provided.

(f) Construction Contractor shall cause the foregoing indemnification agreement by Construction Contractor to be included in each subcontract between Construction Contractor and a Subcontractor and between each Subcontractor and its Subcontractors and shall be in favor of each of the Indemnitees and Construction Contractor, and at Owner's request, Construction Contractor shall provide evidence satisfactory to Owner that it has fulfilled its obligation under this Section.

(g) If any claim indemnified hereunder has not been settled or discharged when the Work is completed, final payment of the Contract Sum shall not be due, unless and until Construction Contractor provides a (i) bond issued by a bonding company satisfactory to Owner, (ii) other security acceptable in an amount equal to 150% of the amount of any such claim, including interest on such claim as estimated by Owner, or (iii) other security acceptable to Owner, which bond or other security shall be in form and substance satisfactory to Owner and shall be subject to such increase as Owner may from time to time require as interest accrues on such claim.

(h) In any and all claims against any Indemnitee or any of its agents or employees by any employee of Construction Contractor, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.17 Construction Contractor will keep complete and detailed books and records which will accurately reflect costs. Such books and records and all supporting data shall, at all reasonable times and upon reasonable notice, until three years after the Work has been finally completed, be open for audit, inspection and copying by Owner and its authorized representatives. The Contract Sum shall be allocated and itemized by Construction Contractor in accordance with Owner's cost segregation study as directed from time to time by Owner or its third party consultant to allow Owner to properly allocate each element of the Contract Sum for federal income tax purposes.

3.18 Construction Contractor shall not divulge information concerning the Contract Documents or any Work to anyone (including information in applications for permits, variances, etc.) without Owner's prior written consent. Owner reserves the right to control the release of all information relating to the Project, including the

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timing of any release, together with its form and content. This requirement shall survive the expiration of the Contract Documents.

3.19 If Building Owner/Manager is different from Owner, Construction Contractor agrees that:

(a) Construction Contractor shall at Construction Contractor's sole cost and expense arrange directly with Building Owner/Manager for all access to the Work Area, storage at the Site, use of elevators and other vertical transportation, temporary utilities and facilities.

(b) Construction Contractor shall at Construction Contractor's sole cost and expense comply and cause others to comply with all requirements of Building Owner/Manager with respect to the conduct of its activities at the Site, and the activities of the employees of Construction Contractor and subcontractors, so that the foregoing shall not interfere with the activities of Building Owner/Manager or other tenants of the Building.

3.20 Construction Contractor shall include in the Contract Sum all Allowances stated in the Contract Documents. Items covered by these Allowances shall be supplied for such amounts and by such persons as Owner may direct. "Allowances" means the amounts stated to be allowances from time to time in the Contract Documents and such amounts represent the actual cost of the articles for which allowances are stated, and include any cost of hauling, cartage, supervision, preparing of work, and the cost of installing. Whenever the estimated budget cost attributable to an Allowance item is less than the actual cost of such Allowance, the Contract Sum shall be increased by Change Order to reflect such difference. Whenever the estimated budget cost attributable to an Allowance item is greater than the actual cost of such Allowance, the Contract Sum shall be decreased by Change Order to reflect such difference. In accordance with the plans and specifications, Owner will select materials or equipment for which an Allowance is provided and notify Construction Contractor of Owner's selection and price agreed upon. Construction Contractor shall contract for said materials and/or equipment and supervise their delivery and installation and be responsible for such Allowance items as fully as for other parts of the Work.

3.21 Construction Contractor shall perform all of its obligations under the standard of care of a first class contractor. All references in the Contract Documents to a "first class contractor", "fully competent first class contractor", or activities to be performed in a "first class manner" or any similar words or phrases as used in reference to Construction Contractor shall mean Construction Contractor's best skill and judgment in accordance with the practice exercised by a fully competent, first class contractor whose competence and professionalism equals that of contractors with at least ten (10) years experience in performing the work and services and constructing projects similar in scope and complexity to those required of Construction Contractor under the Contract Documents for large corporate and institutional clients in the greater metropolitan area surrounding the Project.

3.22 Owner has elected to implement an Owner Controlled Insurance Program ("OCIP") in accordance with Schedule A, attached herein, that will provide Workers' Compensation, Employer's Liability, General Liability and Excess "Umbrella" Insurance for the Construction Manager, Electrical Trade Manager, Construction Contractor, and all eligible Construction Contractors and sub-contractors of every tier providing direct labor on the Project. Owner agrees to pay all premiums associated with the OCIP including all deductibles or self-insured retentions unless otherwise stated in the Contract Documents.

The Owner will also provide, at its own cost, builder's risk coverage as outlined in Schedule A.

#### ARTICLE 4 SUBCONTRACTORS

4.01 Any contract or a series of contracts between Construction Contractor and any subcontractor related to the Work which entitles or could, based on anticipated change orders, reasonably anticipate entitling such subcontractor to payments aggregating at least \$50,000 shall not be awarded by Construction Contractor unless and until Construction Contractor has (i) complied with the requirements of Section 4.02 below, (ii) obtained at least three (3) competitive bids from qualified subcontractors approved by Owner, (iii) obtained rate and unit price schedules related to the Work to be accomplished by such subcontractor, (iv) disclosed the results from such competitive bids and rate and price schedule information in writing to Owner, (v) made a recommendation to Owner with respect to the bid to be accepted and (vi) obtained Owner's approval of Construction Contractor's acceptance

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of the bid. The approval rights of Owner shall not relieve Construction Contractor of or otherwise or affect its obligation to retain subcontractors that have adequate skill, experience, work forces and other qualifications necessary to perform the Work in accordance with this Contract.

4.02 Construction Contractor, from time to time at the request of Owner (and in any event prior to the awarding of a subcontract or purchase order for a particular portion of the Work), shall furnish to Owner in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for such portion of the Work as Owner may designate, together with sufficient documentation for Owner to review the qualifications, capabilities and financial capacity of each such proposed subcontractor, which information shall be in the form and meet the requirements of Owner. Construction Contractor shall not allow any such proposed person or entity to whom Owner has made objection to bid on the Work. Construction Contractor shall not be entitled to an adjustment to the Contract Sum or an extension of the contract time by reason of any objection to a proposed bidder by Owner or Construction Contractor pursuant to this Section. Construction Contractor shall not unreasonably refuse to solicit bids from subcontractors designated by Owner.

4.03 Owner actively seeks out historically under-utilized businesses ("HUB's") which are qualified to fulfill Owner's requirements for goods and services purchased. If Construction Contractor meets the state or federal qualifications to be a HUB, Construction Contractor is encouraged to submit documentation supporting such status to Owner with the Agreement. Owner's Supplier Diversity Development Program ("SDDP") is committed to supporting HUBs with a focus on Minority and Women Business Enterprises and has taken affirmative steps to provide opportunities for their growth and participation in Owner's procurement process. Owner's primary suppliers, such as Construction Contractor, are asked if it is feasible and, if using subcontractors to provide Work, including labor and materials, required by Owner pursuant to the Contract Documents, to subcontract with HUBs. Owner will consider the level of Construction Contractor participation in SDDP before entering into the Agreement with Construction Contractor and in the quarterly evaluation of Construction Contractor's performance under the Contract Documents. If Construction Contractor utilizes one or more HUBs as subcontractors, Construction Contractor shall submit a quarterly report of such utilization to Owner on Owner's SDDP form. SDDP underscores Owner's commitment to increase procurement activity with HUBs on a corporate-wide basis. Owner has a goal to utilize HUBs for an amount equal to 5% of the dollar amount of Owner's purchases. Construction Contractor further acknowledges that upon Owner's request, Construction Contractor will use its best efforts to use Minority and Women Business Enterprise ("M/WBE"), Small Disadvantaged Business ("SDB"), and Small Business Enterprise ("SBE") (each as certified by the appropriate state or local body responsible for such certification) as subcontractors. If Construction Contractor uses M/WBE, SDB or SBE vendor(s), then Owner and Construction Contractor will agree to the guidelines regarding the use of such vendors, in order to ensure that Construction Contractor provides the Work, including labor and materials, according to the terms of the Contract Documents. The provision of this Section 4.03 shall not modify or otherwise affect Construction Contractor's obligation under Section 3.06.

4.04 By appropriate agreement, Construction Contractor shall require each subcontractor, to the extent of the Work to be performed by such subcontractor, (i) to be bound to Construction Contractor by the terms of the Contract Documents, (ii) to assume toward Construction Contractor all of the obligations and responsibilities which Construction Contractor, by these Contract Documents, assumes toward Owner, and (iii) to grant to Construction Contractor all of the rights which Construction Contractor, by these Contract Documents, grants to Owner. Construction Contractor shall require each subcontractor to enter into similar agreements with its subcontractors. Nothing contained in the Contract Documents shall create any contractual obligation between any subcontractor and Owner; provided, however, that each subcontract shall provide that Owner, at Owner's option, shall have the right to cause the subcontractor to perform for the benefit of Owner the remainder of the Work covered by such subcontract in the event that the Contract is terminated, so long as Owner shall have paid to Construction Contractor all amounts then due such subcontractor and thereafter Owner continues to pay the amounts due such subcontractor as they come due.

4.05 Construction Contractor shall require each subcontractor to furnish, maintain, and continuously comply, as applicable, with the requirements applicable to Construction Contractor set forth on Schedule A to these General Conditions to Single Project Construction Services Agreement.

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ARTICLE 5 WORK BY OWNER OR BY SEPARATE CONTRACTORS

Owner reserves the right to let other contracts in connection with the Site and Construction Contractor hereby acknowledges that Building Owner/Manager or any tenant in the Building may also let to other contractors contracts in connection with the space each has in the Building. Construction Contractor shall coordinate, as needed, and cooperate with all such contractors. If any part of Construction Contractor's Work depends for proper execution or results upon the work of Owner or any separate contractor, Construction Contractor shall, prior to proceeding with the Work, promptly report to Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of Construction Contractor to report same after the same becomes apparent shall constitute an acceptance of Owner's or separate contractor's work as fit and proper to receive Construction Contractor's Work, except as to latent defects in such work by others.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.01 This Agreement will be governed and interpreted by the internal laws of the state where the project is located without reference to the conflict of law rules.

6.02 Owner and Construction Contractor each binds itself, its successors, assigns and legal representatives to the other party hereto and to the successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Construction Contractor shall not assign its rights or responsibilities under the Contract Documents without the prior written consent of Owner which consent may be granted or withheld in Owner's sole discretion, and any attempt at such an assignment without such consent shall be null and void. Further, Construction Contractor shall not assign any monies due or to become due to Construction Contractor hereunder, without the prior written consent of Owner. Owner may assign its rights and obligations under this Contract and following the assumption of such obligations by the assignee, Owner shall be relieved of any and all liability under the Contract.

6.03 All notices required or permitted to be given by the Contract Documents shall be in writing and given in accordance with this Section. Written notice shall be deemed to have been duly served only if (i) intended for Construction Contractor, delivered in person to Construction Contractor's project superintendent at the Site, or (ii) if mailed, within three calendar days after the date it is sent by either registered or certified mail, or (iii) if sent by overnight courier, on the weekday (which is not a holiday) after it is delivered to such overnight courier in sufficient time for next day delivery, in each case for clauses (ii) and (iii) addressed to Owner or Construction Contractor, as the case may be, at the respective address for such notice to be given provided in the Agreement. Either party may change the respective address for receipt of notices under clauses (ii) and (iii) by furnishing at least 10 business days advance written notice of such change in address to the other party.

6.04 If required by Section 3 of the Agreement, Construction Contractor shall furnish Electrical Trade Manager with payment and performance bonds, as applicable, covering Construction Contractor's faithful performance and payment obligations under the Contract Documents and the payment of all of Construction Contractor's obligations arising thereunder. All required bonds shall equal 100% of the then existing Contract Sum. All such bonds shall be with a surety acceptable to Electrical Trade Manager (and in any event such surety shall have a Best rating of at least "A+" and class XII) and shall name Electrical Trade Manager and Owner as obligees thereunder together with such entities as Electrical Trade Manager may designate as additional obligees thereunder. All such bonds shall include a provision stating that no modification of any provision of any Contract Document a change in contract time, Contract Sum or condition of payment, will release the surety either in part or in whole. In any event, all such bonds shall be in form and substance satisfactory to Electrical Trade Manager. If from time to time any Work is bonded and the Contract Sum therefor is increased in the aggregate by one or more increments of \$10,000 or more, then the bond applicable thereto shall be increased by the amount by which the Contract Sum was increased. Bonds shall remain in full force and effect during the term of Contract Documents and during the term of warranty related thereto.

6.05 No action or failure to act by Owner or Construction Contractor shall constitute a waiver of any right or duty afforded either of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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6.06 If for any reason labor employed directly or indirectly through a subcontractor or by Construction Contractor engages in any action taken with the intent of impeding or stopping the progress of the Work, or individually or in concert with others, unlawful strikes, slow downs or taking, engaging or participating in any other withholding of or interference with services (including honoring pickets or picket lines, improperly performing Work required to be performed under the Contract Documents or making claims resulting in work jurisdiction disputes), and taking all or any of such actions so as to impede or stop the progress of the Work (collectively an "Improper Practice"), Owner shall have the right to require that Construction Contractor take all necessary and immediate action to bring about a return to normal operations. If Construction Contractor fails, in the reasonable opinion of Owner, to take prompt remedial action as provided above, Owner shall have the right after 48 hours' notice to Construction Contractor to (a) take such action in the name of Construction Contractor as may be reasonably necessary to obtain an end to the Improper Practice, and (b) back-charge all costs and expenses connected therewith to Construction Contractor, including legal, accounting, administrative and other direct, indirect, general and special expenses.

6.07 In construing or interpreting the Contract Documents, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires. Unless specifically identified to the contrary, throughout the Contract Documents the words "include", "including", "included", and "includes" when used in any tense (i) shall mean "including but not limited to," and (ii) shall not be intended to designate a specific and limited list of items but rather shall designate examples, without limitation of other items to be included. All references contained in these General Conditions to one or more exhibits, schedules or appendices shall be deemed to refer to the exhibits, schedules or appendices attached hereto and incorporated herein, unless the context clearly references exhibits, schedules or appendices to another agreement or document, and said exhibits are incorporated into these General Conditions by reference and are a part of the Contract Documents as though fully rewritten herein.

6.08 Construction Contractor has not and shall not, directly or indirectly, provide funds or other considerations to any person or entity (including Owner and Owner's employees and agents), improperly to procure special or unusual treatment with respect to the Contract Documents or for the purpose of otherwise improperly influencing the relationship between Owner and Construction Contractor relating to the Project. Additionally, Construction Contractor shall cause all of its officers, directors, employees, partners, agents and subcontractors (as the case may be) to comply with the restrictions contained in the preceding sentence. Construction Contractor represents and warrants to Owner that Construction Contractor, its officers, directors, employees, partners, agents, and subcontractors have not at any time in the past directly or indirectly provided funds or other consideration to any person or entity improperly to procure special or unusual treatment with respect to the Contract Documents or for the purpose of otherwise improperly influencing the relationship between Owner and Construction Contractor.

6.09 In the event of any dispute whatsoever between Owner and Construction Contractor, Construction Contractor shall continue to proceed diligently with performance as required by the Contract Documents. The parties shall make reasonable efforts to resolve each dispute within 30 days from the time the parties have knowledge of the existence of such dispute; provided, however, in no event shall delay in such determination excuse prompt and proper performance of the Work or payment of undisputed sums as required by the Contract Documents.

6.10 Except as otherwise expressly provided in the Contract Documents, the Contract Documents are made for the sole benefit of Construction Contractor and Owner and no other person or entity shall have any right or action of any kind hereunder or be deemed to be a third-party beneficiary of the Contract Documents or of the services to be provided hereunder. If any provision of the Contract Documents is held invalid as applied to any fact or circumstance, such invalidity shall not affect the validity of such provisions as applied to any other fact or circumstance or the validity of any other provision of the Contract Documents.

6.11 In the event of any litigation between the parties to construe or enforce the provisions of the Contract Documents, the prevailing party in such litigation shall be entitled to recover from the other its reasonable attorneys' fees and expenses.

6.12 All signs on the Site shall be subject to Owner's prior written approval.

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**ARTICLE 7      TIME**

7.01 All time limits stated in the Contract Documents for the performance of Construction Contractor's obligations are of the essence. If Construction Contractor is delayed at any time in the progress of the Work by (i) any act of Owner not permitted pursuant to the Contract Documents, (ii) changes in the Work ordered by Owner, unless due to deficiencies in the plans which Construction Contractor should have discovered, (iii) fire or other unavoidable casualties, (iv) labor disputes (subject to the provisions of Section 6.06 above), (v) unusual delay in transportation, (vi) uncustomary adverse weather conditions not reasonably anticipated, or (vii) delay authorized by Owner, then the contract time shall be extended by change order for such time as Owner may determine. In no event shall any such extension of contract time exceed the actual period of time lost by reason of the causes aforesaid. In all events, Construction Contractor shall use Construction Contractor's best efforts to eliminate the cause of any delay or minimize any delay. Notwithstanding the foregoing to the contrary, the contract time shall be extended only to the extent the completion date specified in the Completion Schedule is necessarily extended due to any of (i) through (vii) above. Within 5 days after commencement of such delay or deviation from the Completion Schedule, Construction Contractor shall confirm, in writing, any delay or deviation from the Completion Schedule, including advice as to the action Construction Contractor proposes to undertake to correct each deficiency and any claim for extension of time and the probable effect of such delay; otherwise it shall be waived. The presentation of any such claim shall not establish the validity of the claim.

7.02 To the fullest extent permitted by law but subject to the second sentence of this Section 7.02, Construction Contractor agrees that (i) none of Owner, Owner's professionals, Owner's separate contractors, or anyone else acting on Owner's behalf shall be liable for any loss or damage sustained by, or additional costs incurred by, Construction Contractor through delay, acceleration, hindrance, interference or other impediment to completion of the Work caused in whole or in part by Owner, Owner's professionals, Owner's separate contractors, or anyone else acting on Owner's behalf (collectively "Owner's Delay"), and (ii) Construction Contractor shall not be entitled to make and hereby waives any claim for damages or additional costs and agrees that Construction Contractor's sole remedy for any Owner's Delay shall be an extension of the contract time by a change order in accordance with the provisions of the Contract Documents. Notwithstanding the preceding sentence, to the extent an Owner's Delay causes Construction Contractor to incur additional expenses related to the Work, then Construction Contractor shall, as Construction Contractor's sole remedy, be entitled to reimbursement for such additional out-of-pocket costs without any amount for overhead or profit to Construction Contractor or any subcontractor.

7.03 If liquidated damages are applicable to the Project as set forth in Section 4 of the Agreement, and if substantial completion of the Work does not occur on or before the date specified therefor in the Completion Schedule, Construction Contractor shall pay to Owner as liquidated damages for such delay the Per Day Liquidated Damage Amount for each day from and after such scheduled date of substantial completion until substantial completion occurs. If liquidated damages are applicable to the Project as set forth in Section 4 of the Agreement, then Construction Contractor acknowledges and agrees that the damages which Owner will suffer as a result of such delay are difficult to estimate and that the forgoing amount bears a reasonable relationship to the damages that would be suffered and costs incurred by Owner occasioned by such delay. Such liquidated damages relate only to Owner's damages resulting from delays and shall not be construed to constitute a remedy for damages due to any defects in the Work or any other failure of Construction Contractor to perform any of its obligations hereunder, other than its obligation to cause substantial completion to occur in accordance with the Completion Schedule.

**ARTICLE 8      FEES, PAYMENTS AND COMPLETION**

8.01 Construction Contractor represents to Owner that to the best of Construction Contractor's knowledge the Schedule of Values and Anticipated Draw Schedule attached to the Agreement as Exhibit B accurately estimates the amounts that may be payable to Construction Contractor each month; provided, however, that Owner shall be obligated only to make payments in the amounts provided for in the Contract Documents. The Schedule of Values shall be (i) used as a tool to assist Owner in evaluating applications for payment, (ii) based upon the Completion Schedule, and (iii) updated and revised from time to time at Owner's request. The Contract Sum includes all fees to be paid to Construction Contractor any all payments for general conditions items.

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8.02 Subject to additions and deductions by change orders as provided for in the Contract Documents, Owner shall pay Construction Contractor, pursuant to the Contract Documents, for performance of the Work, the Contract Sum set forth in the Agreement. Included within the Contract Sum are all sales, consumer, use, personal property and other similar taxes applicable to the Work or any portion thereof provided by Construction Contractor. Prior to the time Construction Contractor orders any materials or equipment for the Work or performs any labor on the Site, Construction Contractor shall be entitled to receive progress payments only to cover Construction Contractor's reasonable out-of-pocket costs and expenses incurred in the performance of Construction Contractor's services under the Contract Documents. Construction Contractor shall submit to Owner no later than the 25th day of each month an itemized application for payment substantially in the form of Schedule 8.02 attached hereto (the form of which must be satisfactory to Owner), notarized, supported by such documents and data substantiating Construction Contractor's right to payment as Owner may reasonably require, and reflecting retainage as provided elsewhere in the Contract Documents ("application for payment"). Notwithstanding anything to the contrary contained in the Contract Documents, Owner requires, as a condition of approving and/or making a progress payment, that Construction Contractor furnish Owner (a) with respect to the current application for payment, an affidavit listing every subcontractor in connection with the Work and the amounts due or to become due to such subcontractors for Work done and materials furnished through the date of said application for payment; (b) with respect to the current application for payment, a certified payroll for such month; and (c) with respect to the payment made for the preceding month, evidence satisfactory to Owner that all payrolls, bills for materials and equipment delivered to the Site, and other indebtedness related to the Work and giving rise to all previous applications for payment up to, but not including, the current one have been paid in full or otherwise satisfied; (d) lien waivers from Construction Contractor covering all Work performed through the date of the current application for payment; (e) lien waivers from each subcontractor covering the payments made through the preceding application for payment; (f) a sworn acknowledgment of payments and credits to which Owner is entitled by Construction Contractor; and (g) Construction Contractor's statement of percentage of completion of each itemized component of the Schedule of Values and the Work as a whole; provided, however, that notwithstanding any provisions of the Contract Documents which are or may appear to be to the contrary, in no event shall Owner be obligated to pay to Construction Contractor an amount which exceeds the cost of the Work incurred by Construction Contractor to the date of the current application for payment less amounts paid to date and less retainage as provided elsewhere in the Contract Documents. Unless otherwise provided in the Contract Documents, the "Cost of the Work", "cost of the Work", and "cost" shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age, and unemployment insurance, and fringe benefits required by agreement or custom; worker's or workers' compensation insurance, bond premiums; and rental value of equipment and machinery. As used throughout the Contract Documents, the terms "Cost of the Work", "cost of the Work" and "cost" shall not include any cost or expense in excess of the Contract Sum. Each application for payment shall be accompanied by such other information as Owner may require.

8.03 Owner will, within 30 days after the receipt of Construction Contractor's application for payment, either approve the application for payment and issue payment to Construction Contractor for such amount as Owner determines is properly due, or notify Construction Contractor in writing of Owner's reasons for withholding such approval and payment. Construction Contractor shall promptly pay each subcontractor and direct material supplier, upon receipt of payment from Owner, out of the amount paid to Construction Contractor on account of such subcontractor's Work or each material supplier's supplies, the amount to which said subcontractor or material supplier is entitled.

8.04 Payments may be withheld by Owner, among other things, on account of (a) defective Work not remedied; (b) claims filed; (c) failure of Construction Contractor to make payments properly to subcontractors or for labor, materials or equipment; (d) damages to another contractor; (e) unsatisfactory prosecution of the Work by Construction Contractor, including the fact that the Work has not progressed to the point indicated in the application for payment; (f) failure of Construction Contractor to fully comply with the procedures set forth in this Article 8; (g) evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; or (h) Construction Contractor's breach of the Contract Documents, not remedied or cured.

8.05 Owner shall retain from each progress payment a retainage (the "Retainage") in the amount of 10% of the Contract Sum eligible for payment to Construction Contractor until the Work is finally complete. Owner shall not be obligated to release the Retainage for subcontractors who have performed work in connection with the

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Work until all of the Work is complete. Following Construction Contractor's request Owner, acting in its sole and absolute discretion and under no obligation, contractual or otherwise to do so, may approve (i) the payment of all retainage owed to any subcontractor following final completion of such subcontractor's Work and presentation of a final lien waiver from such subcontractor and (ii) reduce Retainage from 10% to any lesser percent of the Contract Sum following substantial completion of the Work.

**8.06** When Construction Contractor considers that the Work has reached the point of substantial completion, Construction Contractor shall prepare for submission to Owner a preliminary list of uncompleted items of the Work ("Punch List Items") (a) which do not interfere with the use and occupancy of any area of the Site for its intended purpose and (b) which as a group are capable of being completed by Construction Contractor within 30 days of issuance of any Punch List (the "Punch List" is the list containing the Punch List Items). Substantial completion shall include the following: (i) all systems relating to the Work shall have been fully commissioned, in accordance with industry standards and standards set forth in the Contract Documents for documenting and verifying the operation and performance of such systems in conformity with the design intent, (ii) all improvements included in the Work shall be ready for occupancy for their intended purposes, and (iii) a certificate of occupancy, as required, shall have been duly issued by the applicable governmental authorities. Owner shall have the right to add items to the preliminary Punch List submitted by Construction Contractor based upon Owner's inspection of the Work. Such revised Punch List, when approved along with Owner's determination of substantial completion, shall be the Punch List which must be completed by Construction Contractor by the date for final completion. The failure to include any items on such list does not alter the responsibility of Construction Contractor to complete all Work in accordance with the Contract Documents. When Owner, on the basis of an inspection, determines that the Work has reached the point of substantial completion, Owner will then prepare a Certificate of Substantial Completion which shall establish the date of substantial completion and shall state the responsibilities of Owner and Construction Contractor for security, maintenance, heat, utilities and damage to the Work, and, except as otherwise provided, insurance and warranties required by the Contract Documents shall commence on the date of substantial completion of the Work. The Certificate of Substantial Completion shall be in the form of Schedule 8.06 hereto and shall be submitted to Construction Contractor for Owner's and Construction Contractor's written acceptance of the responsibilities assigned to them therein. Upon substantial completion of the Work and upon application by Construction Contractor and execution of a Certificate of Substantial Completion by Owner, Owner shall make payment for such Work or portion thereof, as provided elsewhere in the Contract Documents.

**8.07** Upon receipt of written notice that the Work is ready for final inspection (and all Punch List Items have been rectified) and upon receipt of an acceptance of a final application for payment, Owner, or its designee, will promptly make such final inspection and when it finds the Work acceptable under the Contract Documents, it will promptly approve the final application for payment and issue the final payment, accompanied by a statement that the Work has been completed in accordance with the terms and conditions of the Contract Documents.

**8.08** The final payment shall not become due until Construction Contractor submits to Owner (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible have been paid or otherwise satisfied; (b) consent of surety, if any, to final payment; (c) if required by Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of all possible liens arising out of the Contract Documents, Construction Contractor's and subcontractors' affidavits, to the extent and in such form as may be designated by Owner; and (d) as-built drawings, operations and maintenance date, warranties, and such other data as may be required by the Contract Documents. The acceptance of final payment by Construction Contractor shall constitute a waiver of all claims by Construction Contractor against Owner, except those previously made and specifically reaffirmed in writing with Construction Contractor's application for final payment and still unsettled.

**8.09** (a) Construction Contractor warrants that title to all Work, materials and equipment covered by an application for payment will pass to Owner either by incorporation in the Project or upon the receipt of payment by Construction Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances ("Liens"). However, Construction Contractor shall remain responsible for the care and custody of such materials, equipment, and Work until such time as Owner accepts (in writing) such responsibility. Construction Contractor further warrants that no Work, materials or equipment covered by an application for payment will have been acquired by Construction Contractor, or by any other person performing Work at the Site of

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furnishing materials and equipment for the Project, subject to an agreement under which as interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Construction Contractor or such person.

(b) In the event that a lien is filed of record as a claim against the Site, the Building, or other improvement on or around the Site or against any monies due or to become due for any Work performed, or any materials furnished for the Work, then in addition to any other right or remedy Owner has under the Contract Documents or at law or equity and unless such lien is the result of Owner's failure to pay Construction Contractor amounts due under the Contract for Work and concerning which there is no dispute, Owner may withhold from Construction Contractor a reasonable amount until said claim or lien has been discharged or there has been furnished to Owner security satisfactory to Owner such that Owner will be protected and held harmless from any liability, fees or costs in connection therewith. In addition, if Construction Contractor fails to remove any such lien by payment or release or to furnish to Owner such satisfactory security, within ten (10) days after written demand, such failure shall constitute a default hereunder. Without limitation of Owner's other rights and remedies, if such a default occurs, Owner may, but shall not be obligated to, procure a bond or other security reasonably calculated to protect Owner from any liability in connection with such default and Owner may back-charge Construction Contractor for all costs and expenses incurred in connection therewith.

#### ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY

9.01 Construction Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Construction Contractor shall designate a responsible member of its organization at the Site, which person shall be approved by Owner in writing, whose duty shall be the promotion of safety and prevention of accidents, and who shall be responsible for enforcing all Government Requirements, and rules, regulations and orders of Owner pertaining thereto. This person shall be Construction Contractor's superintendent unless otherwise designated by Construction Contractor in writing to Owner.

9.02 Construction Contractor shall take all reasonable precautions for the safety of and provide all reasonable protection to prevent damage, injury or loss to all of its employees at the Site and all other persons who may be affected thereby, and all property at the Site or otherwise used in connection with the Work. Such safety and security precautions shall be designed to take into account all risks associated with the location of the Site and may include, to the extent reasonably necessary or appropriate to provide adequate protection, fences and security guards or watchmen. Construction Contractor shall remove, within 24 hours of the discovery thereof, or any graffiti placed on the Site or any improvements, fences or barricades. Construction Contractor shall not use in connection with the Work or store at or near the Site any explosives. Construction Contractor shall permit no open burning on the Site. Construction Contractor shall provide a fire watch during all open flame activities. There shall be a second person equipped with not less than a ten (10) pound dry chemical or two and one half (2-1/2) gallon water fire extinguisher; in computer areas, not less than a nine (9) pound halon fire extinguisher shall be provided. Construction Contractor shall provide Owner and Building Owner/Manager, if different from Owner, adequate notice of any smoke or significant noise-producing operations. These operations shall be restricted from normal hours unless approved in writing by Owner and Building Owner/Manager, if different from Owner. Without limitation of Construction Contractor's obligations, Owner may provide watchmen if Owner deems it necessary for the proper protection of the Work and Site; however, Owner shall not be liable for any acts or omissions of said watchmen.

9.03 Construction Contractor shall promptly report in writing to Owner all accidents whatsoever arising out of the performance of the Work, whether on or off the Site, which cause death, personal injury or property damage, giving full details and statements of witnesses. If death or serious injuries or serious damages are caused, the accident shall be reported to Owner immediately by telephone or messenger, which report shall be followed as promptly as practicable by notice in writing to Owner. Any additional compensation or extension of time claimed by Construction Contractor on account of emergency work shall be determined as provided in Article 10 for Changes in Work; provided, however, that Construction Contractor shall not be entitled to additional compensation or additional time to the extent that the foregoing is due to the act or omission of Construction Contractor or a person or entity for which Construction Contractor is responsible.

9.04 Construction Contractor shall permit only previously authorized personnel on the Site. At any time and from time to time Owner may elect to initiate security procedures that prohibit access to the Site (or

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portions thereof designated by Owner) except by persons specifically registered with Owner, in which event the following provisions as directed by Owner shall apply: (i) Construction Contractor shall, prior to the commencement of the Work, submit to Owner's Project Manager the names of all personnel either directly employed by Construction Contractor or in the employ of any subcontractor who will be present on the Site; (ii) all construction personnel will be required to register with Owner's security force and/or personnel and wear badges as furnished by Owner; (iii) Owner shall not be required to furnish any construction personnel or anyone else associated with Construction Contractor with such badges unless and until Construction Contractor has delivered to Owner the certificates of insurance required by Schedule A to these General Conditions to Single Project Construction Services Agreement; (iv) at Owner's election, personnel not displaying badge identification will be removed from the Site until properly registered and/or wearing badges; (v) all badges shall be maintained and controlled by Construction Contractor and shall be returned to Owner upon completion of the Work; and (vi) if additional or special personnel shall be needed for the efficient completion of the Work, then Construction Contractor shall submit a list of names of all such personnel at least 48 hours prior to their appearance on the Site.

#### **ARTICLE 10    CHANGES IN THE WORK**

**10.01** Contract Sum and the contract time including the Project Schedule may be changed only by change order signed by or on behalf of Owner and Construction Contractor.

**10.02** Owner, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract Sum and the contract time shall be adjusted by agreement between Owner and Construction Contractor. All such changes in the Work shall be authorized by change order in the form of Schedule 10.02 hereto and shall be performed under the applicable conditions of the Contract Documents. Any Work expressly included in the plans and specifications shall be performed by Construction Contractor at no extra cost to Owner, notwithstanding any order from Owner to Construction Contractor which might contemplate such Work as an extra.

**10.03** The cost or credit to Owner resulting from a change in the Work shall be determined in one or more of the following ways:

##### **10.03.01 Lump Sum Method.**

(a) Compensation for additional work: Within fourteen (14) days after receipt of a bulletin for changes in the work requested of Construction Contractor by Owner, and not covered by agreed upon "unit prices", Construction Contractor shall submit to Owner's Project Manager for Owner's approval an itemized lump-sum proposal stating the amount to be added to or deducted from the Contract Sum by cost code, and the effect, if any, on the Completion Schedule by reason of such changes. The lump-sum price for additional or deleted work not covered by "unit prices" shall be determined as follows:

(i) For additional work to be performed by the subcontractors, a lump-sum itemized price to show the net amount of each subcontractor's direct costs for labor, materials, equipment rental, and transportation, plus the percentage fee thereof stipulated herein to cover all other charges, for or in connection with such work of Construction Contractor and subcontractors. The percentage fee(s) include all charges for layout, supervision (field and home office), small tools and related items, general expenses, general conditions items, fees, overhead and profit of Construction Contractor and subcontractors. Construction Contractor understands that the net amount of the subcontractors' direct costs for labor, materials, equipment rental and transportation above stated shall not include any markup by subcontractors for layout, supervision (field and home office), small tools and related items, general expenses, overhead and profit, and other related items, nor any markup for the costs of product and/or equipment purchased directly by Owner and furnished to subcontractor.

(ii) For additional work to be performed by Construction Contractor's own forces, a lump-sum itemized price to show the net amount of Construction Contractor's direct costs for labor, materials, equipment rental and transportation, plus the percentage fee thereof stipulated herein to cover all other charges for, or in connection with, such work, including all charges for layout, supervision (field and home office), small tools and related items, general expenses, overhead, and profit. Construction Contractor shall not include any

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markup for the costs of product and/or equipment purchased directly by Owner and furnished to Construction Contractor.

(b) Credit for deleted work not covered by agreed upon "unit prices" shall be determined as follows:

(i) For deleted work to be performed by subcontractors, Owner shall receive a lump-sum credit equal to the net credit to Construction Contractor as itemized by subcontractors for labor, materials, equipment, transportation, and taxes, plus the percentage fee thereof stipulated herein covering such items as normal charges for layout, supervision (field and home office), general expenses, overhead and profit of Construction Contractor and subcontractors.

(ii) For deleted work to be performed by Construction Contractor's own forces, Owner shall receive a lump-sum credit equal to the net estimated saving to Construction Contractor on account of the deleted work for labor, material, equipment, transportation, and taxes, plus the percentage fee thereof stipulated herein covering such items as normal charges for layout, supervision (field and home office), general expenses, overhead, and profit.

10.03.02 Time and Materials Method. If Owner elects to direct that extra work be performed on a time and material basis, percentages as stipulated below will be allowed in addition to actual "on site" costs of such extra work. Percentages shall be applied to approved invoiced costs of materials and to approved payrolls as follows: Requests for payment for work performed on a time and material basis shall be submitted within ten (10) days after completion of such work. When work on a time and material basis continues for more than two weeks, Construction Contractor shall submit a weekly report to Owner's Project Manager apprising such Project Manager of work performed during the preceding week to include: material quantities, labor time, equipment rental time and other operating cost information.

#### 10.03.03 Computations of Percentages for Combined Overhead and Profit.

(a) The percentages set forth on Exhibit E to the Agreement shall be applied for combined overhead and profit, as appropriate, unless otherwise stated, and are maximums that may be added to approved costs. Those percentages set forth on Exhibit E for change orders are Construction Contractor's sole payment of fees and general conditions items related to such Change Orders and any Construction Contractor Fee or percentage for general conditions items set forth in Section 3 of the Agreement shall not apply to any such Change Order. Construction Contractor shall not include any markup for the costs of product and/or equipment purchased directly by Owner and furnished to Construction Contractor.

(b) Construction Contractor agrees that these percentages are fair, and that they include adequate compensation for supervision, overhead, bond, profit and all other general expense. No percentage fee or other markup of any kind shall be applicable to any premium portion of wages, taxes, or related benefits. If Owner issues a field order or bulletin for any addition or deletion as to which unit prices (pursuant to Section 10.04) are applicable, the Contract Sum shall be adjusted by the amount of such unit prices in lieu of the negotiated sum herein above mentioned, and the percentage fee markup shall not be applied thereto.

10.04 The rates and unit prices set forth on Exhibit F to the Agreement shall apply to all change orders involving the labor or materials set forth on Exhibit F to the Agreement which Owner notifies Construction Contractor in writing will be applicable to a particular change order and are all inclusive of all expenses and costs related to such rates and unit prices.

10.05 Owner, without invalidating the Contract, may order changes in the Work prior to the execution of an appropriate change order hereunder, and, upon receipt of a written order from Owner, Construction Contractor shall proceed with the Work and incorporate such change into the Work pending execution of an appropriate change order as set forth in this Article 10; provided, however, that if Owner and Construction Contractor are unable to agree upon a different price for such Change Order within 30 days, then the Construction Contractor shall be entitled to a Change Order based upon the time and materials method set forth in Section 10.03.02 above.

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10.06 If Construction Contractor claims that additional cost is involved because of (i) any order by Owner to stop the Work pursuant to Section 2.04 where Construction Contractor was not at fault, (ii) failure of payment by Owner to Construction Contractor of non-disputed amounts owed to Construction Contractor, or (iii) any other provision herein under which Construction Contractor is entitled to claim additional cost, Construction Contractor shall make such claim as provided in this Section. If Construction Contractor believes it is entitled to make a claim for an increase in the Contract Sum, Construction Contractor shall give Owner written notice thereof within 20 days after the occurrence of the event giving rise to such claim. This notice shall be given before proceeding to execute the Work, except in an emergency endangering life or property, in which case Construction Contractor shall proceed in accordance with Section 9.03. No such claim shall be valid unless made as required in this Section; however, the mere presentation of such a claim shall not establish the validity thereof. Any change in the Contract Sum resulting from such a claim which is valid shall be authorized by change order.

#### **ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

11.01 If any portion of the Work is improperly covered, such Work must, if required in writing by Owner, be uncovered for Owner's observation and shall be replaced at Construction Contractor's expense.

11.02 (a) Construction Contractor shall promptly repair or, if necessary in Owner's opinion, remove all Work rejected by Owner as defective or as failing to conform to the Contract Documents, whether such Work is observed before or after final completion and whether or not it is fabricated, installed or completed. Construction Contractor shall bear all costs of correcting such rejected Work and shall be responsible for time lost correcting such rejected Work. Construction Contractor shall bear the cost of making good all work of Owner or separate contractors destroyed or damaged by such repair or removal.

(b) If, within one year after the date of final completion of the Work or within one year after acceptance by Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, Construction Contractor shall correct it promptly after receipt of a written notice from Owner to do so unless Owner has previously given Construction Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract.

(c) Within sixty (60) days after the discovery of defective or nonconforming Work, Owner may choose to accept same instead of requiring its removal and correction by giving written notice thereof to Construction Contractor, in which case a change order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

11.03 Construction Contractor acknowledges that, in performing its obligations under this Article 11, its access to the Building may be limited by Owner's operations, if any, on a 24-hour-per-day, seven-days-per-week basis and by Owner's special security procedures, if any, and agrees that such limitations shall not relieve Construction Contractor of such obligations or otherwise modify or limit such obligations.

#### **ARTICLE 12 TERMINATION**

12.01 If the Work is stopped in whole or in substantial part for a period of 180 days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Construction Contractor or any subcontractor or any of their employees or agents, or if the Work in whole or in substantial part is stopped for a period of 60 days by Construction Contractor because Owner has not made payment of undisputed amounts therefor (other than as permitted by the Contract Documents), then Construction Contractor may, upon 30 additional days' written notice to Owner, terminate the Contract Documents and recover from Owner payment for all Work properly executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery together with reasonable out-of-pocket costs incurred by Construction Contractor in shutting down the Work; provided, however, that Construction Contractor shall in no event be entitled to recover for lost profits or consequential or other damages.

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12.02 (a) Owner may terminate the Contract Documents at any time without cause and without prior notice to Construction Contractor, and in such event, Owner will pay Construction Contractor for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the Work completed as of the date of termination. Owner will not be responsible to reimburse Construction Contractor for any continuing contractual commitment to subcontractors or for penalties or damages for canceling such contractual commitments inasmuch as Construction Contractor shall make all subcontracts and other commitments subject to this provision. In the event of termination by Owner, Owner may require Construction Contractor promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which Owner in its sole discretion chooses to take by assignment, and in such event, Construction Contractor shall promptly execute and deliver to Owner written assignment of the same. Owner shall reimburse Construction Contractor for taking possession and use of any materials, equipment, tools, construction equipment and machinery on the Site as set forth in Section 12.02(b)(i) and (ii) below.

(b) If Construction Contractor is adjudged as bankrupt, or if Construction Contractor makes a general assignment for the benefit of Construction Contractor's creditors, or if a receiver is appointed on account of Construction Contractor's insolvency, or if any provision of the bankruptcy law is invoked by or against Construction Contractor, or if Construction Contractor persistently or repeatedly refuses or fails (except in cases for which extension of contract time is provided) to supply enough properly skilled workmen or proper materials, or if Construction Contractor fails to make proper payment for materials or labor, or disregards any Government Requirements, or if Construction Contractor fails to perform and prosecute the Work properly, or fails to complete the Work entirely on or before any date established for partial or final completion, or a labor dispute causes substantial disruptions or delays, through work stoppages, picketing, jurisdictional disputes or similar actions or failures to act by subcontractors or, without limitation, otherwise fails to perform any provisions of the Contract Documents, then notwithstanding any other rights or remedies granted Owner under the Contract Documents, Owner may, without prejudice to any other right or remedy (i) terminate the employment of Construction Contractor and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Construction Contractor (to the extent any of same have not been paid for by Owner, Owner shall lease same from Construction Contractor at a rate equal to 80% of the standard book rate as reflected in the Rental Rate Blue Book for Construction, latest edition), (ii) use Construction Contractor's equipment for which Owner was paying a leasing fee so long as Owner continues to pay such leasing fee, and/or (iii) may finish the Work by whatever method Owner may deem expedient. In such case, Construction Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum plus leasing fees referred to in (ii) above shall exceed: (1) the expense of completing the Work including compensation for additional managerial and administrative services, plus (2) Owner's losses and damages because of Construction Contractor's default, such excess shall be paid to Construction Contractor. If such expense plus Owner's losses and damages shall exceed such unpaid balance, Construction Contractor shall pay the difference to Owner promptly on demand and Owner may resort to any other rights or remedies Owner may have by law or under the Contract Documents.

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[The next page is the list of Schedules to General Conditions to Single Project Construction Services Agreement.]

EXHIBIT HRFPXXA/B – BEST AND FINAL PRICE

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**CDC I Bear**

<b>RFP No.</b>	<b>Package</b>
RFP 01A	Underground Systems.
RFP 03A	Medium Voltage Equip. & Cabling.
RFP 04A	3rd Party NETA Testing.
RFP 05A	Equipment Rigging.
RFP 06A	LV Power Distribution & General Ltg./Receptacles.
RFP 07A	Fire Alarm Systems.
RFP 08A	Security Installation.
RFP 10A	Lightning Protection.
RFP 14A	UPS Equipment & Cabling.
RFP 15A	Site Lighting & Security and Fiber Conduit.
RFP 16A	HVAC & Mechanical Equipment.
RFP 17A	Monitoring System.
RFP 20A	Raised Floor Grounding (included in RFP 20).
RFP 20A	Rack Power.
RFP 21A	IT Cable Conveyance Systems.

**CDC II Brandywine**

<b>RFP No.</b>	<b>Package</b>
RFP 01A	Underground Systems.
RFP 03B	Medium Voltage Equip. & Cabling.
RFP 04B	3rd Party NETA Testing.
RFP 05B	Equipment Rigging.
RFP 06B	LV Power Distribution & General Ltg./Receptacles.
RFP 07B	Fire Alarm Systems.
RFP 08B	Security Installation.
RFP 10B	Lightning Protection.
RFP 14B	UPS Equipment & Cabling.
RFP 15B	Site Lighting & Security and Fiber Conduit
RFP 16B	HVAC & Mechanical Equipment.
RFP 17B	Monitoring System.
RFP 20B	Raised Floor Grounding (included in RFP 20).
RFP 20B	Rack Power.
RFP 21B	IT Cable Conveyance Systems.

LIST OF SCHEDULES

TO

GENERAL CONDITIONS TO SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT

SCHEDULE A	Owner Controlled Insurance Program
SCHEDULE 8.02	Application for Payment Form
SCHEDULE 8.06	Certificate of Substantial Completion
SCHEDULE 10.02	Change Order Form

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**SCHEDULE A  
INSURANCE  
OWNER CONTROLLED INSURANCE PROGRAM  
Bank One - Delaware Projects**

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**A. Owner Controlled Insurance Program**

The Owner has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide Workers' Compensation, Employer's Liability, General Liability and Excess Liability Insurance for the Construction Manager, Electrical Trade Manager and all eligible Contractors of every tier providing direct labor on the Project. The Owner agrees to pay all premium associated with the OCIP including deductibles or self-insured retention unless otherwise stated in the Contract Documents.

The Owner will also provide Builder's Risk coverage as outlined in Section G (4).

Eligible Contractors include all contractors providing direct labor on the project site (see definition of ineligible contractors below). Temporary labor services and leasing companies that include direct labor on the project site are to be treated as a contractor.

**B. Applicability of the OCIP**

The following types of contractors (hereinafter called ineligible contractors) shall not be eligible for coverage in the OCIP: consultants, suppliers, vendors, materials dealers, guard services, janitorial services, truckers (including trucking to the project where delivery is the only scope of work performed), and other temporary project services. In addition to the above, the Owner may choose not to include in the OCIP contractors of any tier whose contract, on a single basis, does not exceed \$10,000 in value. Ineligible contractors shall be required to maintain their own insurance of the types and with the limits as set forth in Section L, at their own expense, and shall promptly furnish the Owner, or its designated representative, certificates of insurance giving evidence that all required insurance is in force.

**C. Insurance Cost Identification**

The Construction Manager and all eligible Contractors shall identify the cost of insurance on the Project, Form 2. The Construction Manager and all Contractors of every tier agree to identify all costs associated with the cost of insurance for all work, including but not limited to insurance premiums, expected losses within any retention or deductible program (loss rate), claims handling charges, service and broker fees, overhead and profit, using Form 2 (Insurance Cost Identification Worksheet).

By completing and submitting this insurance cost information, including supporting documents to the Owner, Construction Manager and Contractors warrant that all cost for insurance as described in this paragraph have been correctly identified. Coverage and limit requirements are:

**(1) Workers' Compensation and Employer's Liability Insurance:**

WORKERS' COMPENSATION INSURANCE WITH Statutory Benefits as provided by state statute; and EMPLOYER'S LIABILITY LIMITS:

- (a) \$500,000 Bodily Injury each Accident
- (b) \$500,000 Bodily Injury by Disease – Policy Limit
- (c) \$500,000 Bodily Injury by Disease – Each Employee

**CONFIDENTIAL****(2) Commercial General Liability and Insurance:**

- (a) Bodily Injury, Property Damage and General Aggregate limits as required in Article V.
- (b) The limits required in Article V. can be satisfied by a combination of general and umbrella liability policies.
- (c) Coverage should include but not be limited to the following supplementary coverage:
  - (i) Contractual Liability to cover liability assumed under this agreement,
  - (ii) Product and Completed Operations Liability Insurance,
  - (iii) Broad Form Property Damage Liability Insurance,
  - (iv) Explosion, collapse and underground hazards (deletion of the X,C,U exclusions) if such exposure exist, and
  - (v) Independent Contractors.

Construction Manager and all eligible Contractors will provide Owner, or its designated Program Administrator and/or insurance carrier, with supporting documentation to verify the workers' compensation, general liability and umbrella liability rates to be used throughout the project to determine the Construction Manager's and Contractors' insurance credits. The insurance rates agreed to prior to execution of this agreement will be the rates used to calculate the final insurance credit for Construction Manager and each eligible Contractor of every tier. Any eligible Contractor of any tier that does not enroll in the OCIP will have a minimum 6% of their contract amount automatically deducted for their insurance credit.

Construction Manager and all eligible Contractors will be required to provide copies of their current declaration pages and premium rate pages for their workers' compensation, general liability and umbrella liability policies to verify the rates they are utilizing on the Insurance Cost Identification Worksheet. If eligible Contractors have insurance policies with deductibles or other loss sensitive programs, they must provide copies of the past five years audited workers' compensation payrolls, currently dated claim loss runs for those same five years for their workers compensation and general liability policies and copies of their deductible or program agreement with their insurance carrier to support the calculation of the loss rate and fixed cost (premium) rate being utilized. If eligible Contractor does not provide this information, the rates for the insurance credit will be calculated using one of the following two methods: 1) the OCIP carrier's manual rates for workers' compensation and general liability insurance or 2) the loss sensitive rates at maximum cost (the fixed cost plus the aggregate loss cost plus claims handling charges plus insurance agent/broker fee) for general liability and workers' compensation insurance.

It is understood and agreed, Construction Manager's and Contractors' insurance cost identified on their Insurance Cost Identification Worksheet, Form 2, is an initial estimate only. The final insurance cost will be subject to final audited payrolls, and if applicable, contract amount and cost of subcontracted work, multiplied by the appropriate insurance rates as agreed to prior to the start of the work. Because the OCIP is subject to a minimum premium, the final insurance credits for Construction Manager and each eligible Contractor of every tier will be subject to their minimum insurance credit and are only subject to an additional deductive change order/charge, not a credit/return. The contract award will be based on the total estimated cost of work including insurance costs. An initial deductive change order will be processed to transfer the insurance cost into the project insurance program. During the term of the contract, including extended periods thereof, the Owner shall have the right to recover all costs for insurance as described in Section C (1), (2), and (3) and Section D that are in addition to those initially identified in the initial deductive change order. The Owner shall have the right to recover these additional costs through deductive change orders.

Contractors of every tier shall complete and submit the Insurance Cost Identification Worksheet, Form 2 as part of their bid to Construction Manager. Construction Manager shall promptly provide copies of such Form 2's to Owner.

**CONFIDENTIAL****D. Change Order Pricing**

Construction Manager shall price, and shall require that all eligible Contractors price change order pricing equal to or greater than fifty thousand dollars (\$50,000) to include the cost to provide insurance as specified in Section C using Construction Manager's and Contractors' previously agreed upon rates, and shall identify the amount of insurance contained in the change order proposal using the Supplemental Insurance Information Form, Form 3.

The Construction Manager's and eligible Contractors' price shall be adjusted by removing the cost of insurance as identified on Form 3. The Owner shall have the right to recover these additional costs through deductive change orders.

**E. Responsibility for Contractors**

The Construction Manager and its Contractors shall require each of their eligible subcontractors to identify the cost for the coverage associated with the work performed for or on their behalf as outlined in this agreement using the methods and documents described herein. Any eligible Contractor not enrolled in the OCIP will automatically have a minimum of 6% of their contract amount deducted from their contract for their insurance credit.

The Contractor shall include all of the provisions of this agreement in every subcontract so that such provisions will be binding upon each of its subcontractors.

**F. Audit and Recovery of "Insurance Cost"**

For insurance purposes, Construction Manager and Contractors of every tier agree, and shall require all tiers of subcontractors to agree, to keep and maintain accurate and classified records of its payroll for operations at the project site. Construction Manager and Contractors further agree, and will require all tiers of subcontractors to agree, to furnish to the Program Administrator (the insurance company and Willis) full and accurate payroll data and information in accordance with the requirements of the OCIP Project Insurance Manual, incorporated herein by this reference. Construction Manager and all Contractors shall permit the Owner or its representative to examine and/or audit its relevant books and records. Construction Manager and Contractors shall also provide any additional relevant information to Construction Manager or its appointed representatives as may be required. During the term of the Contractor's contract including extended periods thereof, the Construction Manager shall have the right to adjust the contract price to reflect the cost of the Contractors' insurance costs had the Owner not implemented an OCIP.

**G. Sponsor Provided Coverage**

The Owner, at its sole expense, has implemented an Owner Controlled Insurance Program (OCIP) to furnish certain insurance coverage with respects to on-site activities. All policies shall be issued by companies rated A- IX or higher in the most recent A.M. Best ratings. The OCIP will be for the benefit of the Owner, Construction Manager and its eligible Contractors of all tiers (unless specifically excluded) who have on-site employees. Such coverage applies only to work performed under this contract at the Project Site. Construction Manager and eligible Contractors must provide their own insurance for off-site activities that complies with Section L.

The Owner, at its sole expense, will provide and maintain in force the types of insurance listed in subparagraphs (1) through (4) below as a part of the OCIP for Construction Manager and all enrolled/eligible Contractors. Construction Manager and all enrolled Contractors will each receive their own workers' compensation policies and Construction Manager and all enrolled Contractors will be named as Additional Named Insureds on the master commercial general liability and excess liability policies. Construction Manager and all enrolled Contractors will receive certificates of insurance evidencing that they are Additional Named Insureds on the master commercial general liability and excess liability policies. Construction Manager and Contractors enrolled in the OCIP agree that the policy limits of liability,

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coverage terms, conditions and exclusions shall determine the scope of coverage provided by the OCIP. Construction Manager Contractors agree that the purpose of this section is to provide a general understanding of the coverage provided by the OCIP.

(1) **Workers' Compensation and Employer's Liability Insurance** will be provided in accordance with applicable State laws. Limits of Liability and coverage will be as follows:

- (a) Workers' Compensation, form WC 00 00 00 A – Applicable State Statutory Benefits
- (b) Employer's Liability
  - (i) \$1,000,000 Bodily Injury each Accident
  - (ii) \$1,000,000 Bodily Injury by Disease – Policy Limit
  - (iii) \$1,000,000 Bodily Injury by Disease – Each Employee
- (c) Employers Liability Exclusions:
  - (i) liability assumed under a contract;
  - (ii) punitive or exemplary damages;
  - (iii) bodily injury to an employee while knowingly employed in violation of the law;
  - (iv) obligations imposed by a workers compensation, occupational disease or similar law;
  - (v) bodily injury intentionally caused or aggravated by the insured;
  - (vi) bodily injury occurring outside of the United States of America;
  - (vii) any personnel practices, policies acts or omissions;
  - (viii) bodily injury to any person subject to any federal workers or workmen's compensation law or occupational disease law;
  - (ix) bodily injury to any person in work subject to the Federal Employers' Liability Act;
  - (x) bodily injury to a master or member of the crew of any vessel;
  - (xi) fines or penalties imposed for violation of federal or state law;
  - (xii) damages payable under the Migrant and Seasonal Agricultural Worker Protection Act.

(2) **Commercial General Liability Insurance** will be provided on an "occurrence" form under a master liability policy with the following Limits of Liability, Coverage, and Terms:

(a) Limit of Liability:

\$1,000,000 Combined Single Limit any one occurrence and \$2,000,000 in the aggregate annually

(b) Coverage and Terms:

- (i) Occurrence Basis, CG 00 01 (10/01 edition date);
- (ii) Blanket Additional Insured endorsement (excluding completed operations)
- (iii) Blanket Contractual Liability;
- (iv) Products and Completed Operations (Two Year Term); with a term aggregate of \$2,000,000;
- (v) Independent Contractor's Liability;
- (vi) Personal Injury;
- (vii) Explosion, Collapse, and Underground (X, C, U exclusions deleted), and
- (viii) Designated Premises Only.

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## (c) Exclusions:

- (i) Expected or Intended Injury;
- (ii) Contractual Liability;
- (iii) Liquor Liability;
- (iv) Workers' Compensation and Similar Laws;
- (v) Employer's Liability;
- (vi) Aircraft, Auto or Watercraft;
- (vii) Mobile Equipment;
- (viii) War;
- (ix) Damage to Property;
- (x) Damage To Your Product;
- (xi) Damage To Your Work;
- (xii) Damage To Impaired Property Or Property Not Physically Injured;
- (xiii) Recall of Products, Work Or Impaired Property;
- (xiv) Employment Related Practices, form CG 21 47 (edition 7/98);
- (xv) Total Pollution Exclusion With A Hostile Fire Exception, form CG 21 55 (edition 9/99);
- (xvi) Exclusion- Engineers, Architects Or Surveyors Professional Liability, form CG 22 43 (edition 7/98);
- (xvii) Exclusion- Contractors- Professional Liability, form CG 22 79 (edition 7/98);
- (xviii) Total Lead Exclusion, form 58332 (edition 7/93);
- (xix) Radioactive Matter Exclusion, form 62898 (edition 9/01);
- (xx) Asbestos Exclusion Endorsement, form 65165 (edition 9/01);
- (xxi) Exclusion For Continuing Or Progressive "Bodily Injury", "Personal And Advertising Injury" Or "Property Damage", (manuscript form);
- (xxii) Fungus Exclusion, form 78689 (edition 8/01);
- (xxiii) Nuclear Energy Liability Exclusion Endorsement (Broad Form), form IL 00 21 (edition 4/98);

## Additional Exclusions for Medical Payments:

- (i) Any Insured;
- (ii) Hired Person;
- (iii) Injury On Normally Occupied Premises;
- (iv) Workers Compensation And Similar Laws;
- (v) Athletic Activities;
- (vi) Products-Completed Operations Hazard;

## Exclusions for Personal and Advertising Injury Liability:

- (i) Knowing Violation Of Rights Of Another;
- (ii) Material Published With Knowledge Of Falsity;
- (iii) Material Published Prior To Policy Period;
- (iv) Criminal Acts;
- (v) Contractual Liability;
- (vi) Breach Of Contract;
- (vii) Quality Of Performance Of Goods- Failure To Conform To Statements;
- (viii) Wrong Description Of Prices
- (ix) Infringement Of Copyright, Patent, Trademark Or Trade Secret;
- (x) Insureds In Media And Internet Type Business;
- (xi) Electronic Chatrooms Or Bulletin Boards;
- (xii) Unauthorized Use Of Another's Name Or Product;
- (xiii) Pollution;
- (xiv) Pollution- Related;

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Additional Exclusions for Additional Insured- Owner, Lessees Or Contractors- Scheduled Person Or Organization, form CG 20 10 (edition 10/01):

- (i) This insurance does not apply to "bodily injury" or "property damage" occurring after:
  - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
  - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**(3) Excess Liability Insurance** will be provided under a master liability policy with Limits of Liability, Coverages, and Terms as follows:

**(a) Limits of Liability:**

(i)	\$100,000,000	Any one occurrence and general aggregate annually; and
(ii)	\$100,000,000	Term Aggregate Products and Completed Operations.

**(b) Coverage and Terms:**

- (i) Excess of General Liability
- (ii) Excess of Employer's Liability
- (iii) Excess Completed Operations (Two Year Term)

**(4) Builder's Risk Insurance**

The Builder's Risk Insurance will provide Cause of Loss, Special (All-Risk) coverage on a replacement cost basis for the entire construction value, including change orders. This insurance will include as additional insureds Construction Manager and all tiers of Contractors in the Work. The policy includes 1) a waiver of subrogation for Construction Manager and all Contractors of every tier, 2) a sublimit of \$1,000,000 each claim for off-premises storage of materials and transit to the job-site and 3) a \$10,000,000 sublimit for flood and earthquake coverage. In addition to the standard policy exclusions, the policy may contain a terrorism exclusion.

The Builder's Risk will not provide coverage against loss including by theft or disappearance, of any materials (unless the materials are to be incorporated into the Project), tools, or equipment of the Construction Manager or any tier of Contractor, or any other person furnishing labor or materials for the Work.

**All tiers of Contractor shall be responsible for the first \$25,000 of each and every loss.**

Any loss insured under Exhibit I, G(4) is to be adjusted with the Owner and made payable to the Owner as fiduciary for the additional insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. The Construction Manager shall pay each Contractor a just share of any insurance monies received by the Construction Manager, and Construction Manager shall require each Contractor to make payments to his subcontractors in a similar manner. Construction Manager agrees to reconstruct any portion of the Work lost, destroyed or damaged to the extent that Owner makes the proceeds of the insurance (and additional funds if such proceeds are less than replacement cost) available to Construction Manager.

The Owner will make available upon request for inspection by Construction Manager a certificate of Insurance evidencing builder's risk insurance to be furnished by Owner.

**CONFIDENTIAL****H. OCIP Certificates and Policies**

All OCIP furnished insurance coverage outlined above shall be written by insurance companies approved by the Owner. The Owner, through the Program Administrator, shall provide all Contractor(s) with appropriate certificates of insurance evidencing the coverage outlined above.

**I. Termination/Modification of the OCIP**

The Owner reserves the right to terminate or to modify the OCIP or any portion thereof. To exercise this right, the Owner shall provide thirty (30) days advance written notice of termination or material modification to Construction Manager and all Contractor(s) covered by the OCIP. The Construction Manager and all Contractors shall promptly obtain quotations for appropriate replacement insurance coverage and shall review such quotes with Owner. If such quotations are reasonably acceptable to Owner, then Construction Manager and Contractors shall promptly bind such replacement coverage at Owner's expense (except as noted below in this subparagraph I). If quotations obtained by Construction Manager or any of the Contractors are not reasonably acceptable to Owner, Owner and Construction Manager shall work together to identify appropriate replacement insurance coverage that is reasonably acceptable to the Owner. The actual documented cost of such replacement insurance will be reimbursed by the Owner, except as noted below in this subparagraph I. Written evidence of such insurance shall be provided to the Owner prior to the effective date of the termination or modification of the OCIP. The minimum acceptable coverage and limits of liability are as required in Section C. In addition, Construction Manager's umbrella liability policy limit of liability will be not less than \$100,000,000 each occurrence and aggregate.

**J. Construction Manager and Contractors' Responsibilities**

The Construction Manager and Contractors are required to cooperate with the Owner's Representative, Construction Manager, Program Administrator and insurance carriers with regards to the administration and operation of the OCIP. The Construction Manager and Contractors' responsibilities shall include, but not be limited to:

- (1) Complying with applicable construction safety requirements, the OCIP Project Manual and Claims Procedures as outlined in the respective manuals setting forth the administrative procedures required of the Construction Manager and Contractors;
- (2) Providing of necessary contract, operations and insurance information;
- (3) Immediately notifying the Program Administrator of all Contractors upon award of a contract by completing Form-1, Notice of Subcontract Award and Request for Insurance and sending to the Program Administrator;
- (4) Maintaining payroll records and other records as necessary for premium and insurance credit computation;
- (5) Cooperating with the insurance company and the Program Administrator with respect to requests for claims, payroll or other information required under the program;
- (6) Immediately notifying the Program Administrator when any Contractor-Provided Coverage have been canceled, materially changed, or not been renewed; and,
- (7) Timely completion of OCIP Forms:
  - (a) Construction Manager will complete a Notice of Subcontract Award and Request for Insurance – Form 1, upon award of each (Contractor) contract;

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- (b) Construction Manager and eligible Contractors of every tier will complete an Insurance Information Form – Form 2, upon award of a (Contractor) contract;
- (c) Contractor will complete a Notice of Subcontract Award and Request For Insurance – Form 1, upon award of a (Contractor) contract to a second or third tier subcontractor.
- (d) Construction Manager will complete a Notice of Completion – Form 4, upon completion of all work being performed under a Contractor's contract.
- (e) Contractor will complete a Supplemental Insurance Information Form – Form 3, upon execution of any change order in excess of \$50,000.

Failure to follow the procedures outlined in the OCIP Project and Claims Procedures Manual or this Exhibit may result in withholding progress payments or contract default.

#### **K. Assignment of Return Premiums**

The Owner will be responsible for the payment of all premiums associated solely with the OCIP and Builders' Risk and will be the sole recipient of any dividend(s) and/or return premium(s) generated by either. In consideration of the Owner providing of said coverage the Construction Manager and all eligible Contractor(s) agree to:

- (1) Identify all applicable insurance costs in their contract price, and cooperate with the Program Administrator in the confirmation of the Contractor's insurance cost.
- (2) Irrevocably assigned to and for the benefit of the Owner, all return premiums, premium discounts, dividends, retentions, credits, and any other monies due the Owner in connection with the insurance which herein it agrees to provide, and Construction Manager and eligible Contractors agree to evidence same by signing Form 2. The Construction Manager and all eligible Contractors further agree to require each subcontractor of any tier to execute the assignment on Form 2, for the benefit of the Owner.

#### **L. Contractor Provided Coverage**

For any work under this contract, and until completion and final acceptance of the work **all ineligible Contractors as defined in Section B** of this document shall provide certificates of insurance to Construction Manager giving evidence that coverage is in force, as required in Section C. The project site should be shown on the certificate and the Owner, Construction Manager and their directors, officers, representatives, agents and employees shall be endorsed as Additional Insureds on the Commercial General Liability Policy and Automobile Policy.

For any work under this contract, and until completion and final acceptance of the work, Construction Manager and **all Contractors**, at their own expense shall promptly furnish to the Owner certificates of insurance giving evidence that the following coverages are in force:

##### **(1) Automobile Liability Insurance**

\$1,000,000 combined single limit for bodily injury and property damage insuring all owned, non-owned and hired automobiles.

##### **(2) Workers' Compensation and Employer's Liability Insurance (Off-site activities only for Construction Manager and enrolled/eligible Contractors):**

Statutory Limits with Other States Endorsement and minimum Employer's Liability Limits as follows:

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- (a) \$500,000 Bodily Injury each Accident
- (b) \$500,000 Bodily Injury by Disease – Policy Limit
- (c) \$500,000 Bodily Injury by Disease – Each Employee

**(3) Commercial General Liability Insurance (Off-site activities only for Construction Manager and enrolled/eligible Contractors):**

- (a) Commercial General Liability with a limit of liability as required in Article V. for bodily injury, property damage and personal injury, including the following coverages. (The limits can be satisfied by a combination of general and umbrella liability policies.)

- (i) Occurrence Basis;
- (ii) Premises Operations;
- (iii) Contractual Liability;
- (iv) Products/Completed Operations;
- (v) Broad Form Property Damage; and
- (vi) Independent Contractors.

**(4) The Owner, Owner's Representative, Construction Manager and their directors, officers, representatives, agents and employees shall be endorsed as Additional Insureds on the Commercial General Liability and Automobile Liability policies as listed in Article U.**

**(5) Contractors' Pollution Liability Insurance**

- (a) This coverage is required of Construction Manager and all Contractors.
- (b) Limits of Liability of \$2,000,000 each claim and aggregate with a deductible no greater than \$100,000 each claim.
- (c) The policy will provide coverage for sums that Construction Manager and Contractors become legally obligated to pay as loss as a result of claims for bodily injury, property damage or clean-up costs caused by pollution incident. Pollution incidents will include the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, hydrocarbons and microbial matter, including fungi, bacterial or viral matter which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.
- (d) If the policy maintained by Construction Manager and/or Contractors is a "claims made" form, Construction Manager and/or Contractors will maintain this required coverage for four years after completion of the project.

**(6) Professional Liability Insurance (Errors & Omissions)**

- (a) The Construction Manager and all Contractors whose contracts require design services will maintain professional liability insurance providing coverage for claims allegedly arising out of errors, omissions or negligent acts due to their performance, or failure to perform, design, architectural, engineering, land surveying or interior design.
- (b) Limits of liability of not less than \$2,000,000 each claim and annual aggregate with a deductible no greater than \$100,000.

**CONFIDENTIAL****M. Certificate of Insurance**

All required insurance shall be maintained without interruption from the date of commencement of the work under the agreement until the date of the final payment. The Construction Manager will provide Owner and the Contractors will provide the Construction Manager with a certificate of insurance evidencing compliance with the coverages, limits and conditions required in Section L until the date of final payments.

**N. Notice of Cancellation**

Policies and/or certificates of insurance shall specifically provide a thirty (30) day notice of cancellation, non-renewal or material change to be sent to the Owner and Construction Manager.

**O. Other Insurance**

Any type of insurance or any increase of limits of liability not described above which a Contractor requires for its own protection or on account of any statute shall be its own responsibility and its own expense.

**P. Contractor Participation**

Upon the execution of any subcontract, the Construction Manager will immediately report that subcontract to the Program Administrator for enrollment in the OCIP. The Contractor shall incorporate all the provisions of this agreement in any subcontractor agreement and shall cause its Contractors to cooperate fully with the Owner, Construction Manager, Program Administrator and insurance companies for the project, in the administration of the OCIP. The Contractor agrees to cooperate in the safety and accident prevention program and claim handling procedures as established for the project. In accordance with this paragraph Construction Manager shall not permit any eligible Contractor of any tier to enter the project site prior to notifying the Program Administrator, by completion of Form 1, of the Contractor's enrollment in the Owner Controlled Insurance Program (OCIP); failure to do so may negate the afforded coverage(s).

**Q. Waiver of Subrogation**

The Construction Manager and all Contractors waive all rights of subrogation and recovery against the Owner, Willis, Construction Manager and other Contractor(s) of all tiers to the extent of any loss or damage, which is insured under the OCIP. Notwithstanding the foregoing and notwithstanding limitation of the same, Contractor waives its rights of subrogation and recovery for damage to any property or equipment against the Owner, Willis, Construction Manager and other Contractor(s) of all tiers. Each Contractor shall require all subcontractor(s) to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work.

**R. No Release**

The carrying of the above-described insurance shall in no way be interpreted as relieving the Construction Manager or Contractors of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

**S. Approval of Forms and Companies**

All insurance described in this agreement shall be written by an insurance company or companies reasonably satisfactory to the Owner and licensed to do business in Maryland and shall be in a form and content reasonably satisfactory to the Owner. No party subject to the provisions of this agreement shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.

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**T. The Project OCIP Project and Claims Procedures Manual**

The Construction Manager and all Contractors shall adhere to and perform all reporting requirements as detailed in the OCIP Insurance Project and Claims Procedures Manual. Failure to follow the procedures outlined in the manual may result in fines being assessed by the appropriate state agencies or commissions or default judgments from a lawsuit against Owner, Construction Manager or the Contractor. The Contractor, shall at it's own expense, be responsible for any fines or judgments arising out of failure to follow these procedures.

**U. Additional Insureds:**

- & Banc One Building Corporation, its parent and affiliates, directors, officers, representatives, agents and employees
- & Forest Electric Corp.
- & EMCOR Group, Inc.
- & Tishman Construction Corporation
- & Tishman Construction Corporation of Maryland
- & Gensler (architect)
- & EYP Mission Critical Facilities, Inc. (engineer)
- & and their directors, officers, representatives, agents and employees

**V. General Liability/Umbrella Liability Requirements**

The following limits of liability apply based on Contractors' trade classification. The limits required can be satisfied by a combination of general and umbrella liability policies.

**BASE BUILDING/CORE & SHELL**

<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate Combined Single Limit</u>
Access Flooring	\$ 3,000,000
Acoustical Ceilings	\$ 2,000,000
Architectural Woodworking	\$ 3,000,000
Balcony Railings	\$ 5,000,000
Carpentry, Drywall & Insulation	\$10,000,000
Carpeting	\$ 2,000,000
Caulking & Sealing	\$ 5,000,000
Ceramic Tile	\$ 2,000,000
Concrete Work	\$10,000,000
Convector Enclosures	\$ 3,000,000
Cranes	\$25,000,000
Curtain Wall	\$10,000,000
Demolition	\$20,000,000
Electrical	\$10,000,000
Elevator Entrances	\$10,000,000

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<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate</u>	<u>Combined Single Limit</u>
Elevators	\$10,000,000	
Excavation & Foundation	\$10,000,000	
Fireplaces	\$ 2,000,000	
Food Service Equipment	\$ 2,000,000	
Glass & Glazing	\$10,000,000	
Granite Façade	\$10,000,000	
Hoists	\$25,000,000	
HVAC	\$10,000,000	
Landscaping	\$ 5,000,000	
Lath & Plaster	\$ 3,000,000	
Lobby Finishes	\$ 3,000,000	
Lockers	\$ 2,000,000	
Louvers	\$ 3,000,000	
Masonry	\$10,000,000	
Mirrors	\$ 3,000,000	
Miscellaneous Iron	\$10,000,000	
Ornamental Metals	\$ 5,000,000	
Painting & Finishing	\$ 2,000,000	
Piling	\$10,000,000	
Plumbing	\$10,000,000	
Progress Photographs	\$ 2,000,000	
Refuse Chute (Construction)	\$10,000,000	
Resilient Flooring	\$ 2,000,000	
Roll-Up Doors	\$ 3,000,000	
Roofing, Waterproofing & Sheetmetal	\$10,000,000	
Rubbish Removal (Construction)	\$ 5,000,000	
Scaffolds	\$20,000,000	
Security Guard Service	\$ 3,000,000	
Shower Doors	\$ 3,000,000	
Sidewalk Bridges	\$20,000,000	
Signs & Graphics (Exterior)	\$10,000,000	
Signs & Graphics (Interior)	\$ 5,000,000	
Site Improvements	\$ 5,000,000	
Skylights	\$10,000,000	
Spray Fireproofing	\$10,000,000	

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Single Project Construction Services Agreement 3/03/2003

FE 014541

**B-0314**

<u>Trade Classification</u>	Per Occurrence and General Aggregate <u>Combined Single Limit</u>
Sprinkler System	\$10,000,000
Stonework (Granite & Marble)	\$10,000,000
Storefronts	\$10,000,000
Structural Steel	\$20,000,000
Stucco (Exterior)	\$10,000,000
Surveying	\$ 2,000,000
Swimming Pools	\$ 5,000,000
Tennis Courts	\$ 3,000,000
Test Boring	\$ 5,000,000
Testing & Inspection	\$ 2,000,000
Toilet Partitions	\$ 2,000,000
Trash Chute (Compactor)	\$ 5,000,000
Trash Compactor	\$ 2,000,000
Venetian Blinds	\$ 3,000,000
Waterproofing & Dampproofing	\$10,000,000
Window Washing Equipment	\$10,000,000
Windows	\$10,000,000
Wood Flooring	\$ 2,000,000

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INTERIOR FITOUT/TECHNOLOGIES

<u>Trade Classification</u>	Per Occurrence and General Aggregate <u>Combined Single Limit</u>
Acoustical Ceiling	\$ 1,000,000
Aluminum Windows	\$ 3,000,000
Balcony Railings	\$ 5,000,000
Carpeting	\$ 1,000,000
Carpentry, Millwork, etc.	\$ 2,000,000
Caulking & Sealing	\$ 1,000,000
Ceramic Tile	\$ 1,000,000
Concrete Work	\$ 3,000,000
Cranes	\$25,000,000
Demolition	\$ 5,000,000
Drywall	\$ 2,000,000
Electrical	\$ 3,000,000

<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate Combined Single Limit</u>
Elevators	\$ 5,000,000
Façade Cleaning	\$ 5,000,000
General Contractor	\$10,000,000
Glass & Glazing	\$ 3,000,000
Hoists	\$25,000,000
HVAC	\$ 3,000,000
Lath & Plaster	\$ 2,000,000
Lockers	\$ 1,000,000
Masonry/Stone	\$ 3,000,000
Metal Toilet Partitions & Accessories	\$ 1,000,000
Ornamental Misc. Metals	\$ 2,000,000
Painting & Finishing	\$ 1,000,000
Plumbing	\$ 3,000,000
Resilient Flooring	\$ 1,000,000
Roofing & Sheet Metal	\$ 3,000,000
Scaffolding	\$20,000,000
Signs & Graphics	\$ 1,000,000
Sprayed Fireproofing	\$ 2,000,000
Sprinkler System	\$ 3,000,000
Structural Steel	\$ 5,000,000
Waterproofing	\$ 1,000,000

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